

*United States Court of Appeals
for the Second Circuit*



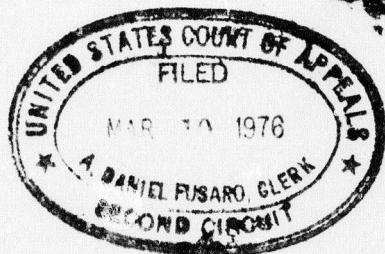
APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE
SECOND CIRCUIT

No. 7022

LUCIO P. SALVUCCI
Plaintiff, Appellant



v.

THE NEW YORK RACING ASSN., INC., ET AL.
Defendants, Appellees

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

DOCKET ENTRIES AND OTHER RELEVANT DOCUMENTS

LUCIO P. SALVUCCI
Pro Se
746 Commercial Street
Weymouth, Massachusetts
(617) 337-0485

PAGINATION AS IN ORIGINAL COPY

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SALVUCCI v. NEW YORK RACING ASSN.

DATE	NR	PROCEEDINGS	
9-31-75		Complaint filed. Summons issued.	(1)
10/2/75		Summons retd and filed Executed.	(2)
10-4-75		Copy of letter dtd 9-2-75 to Clerk of the HDL Panel from Steven T. Keefe filed.	
10-4-75		By MISHLER, CH. J.-Stip. & Order dtd 9-4-75 that the time of deft New York Racing Assoc. to answer the complaint is extended to 10-3-75 filed.	(3)
10-17-75		By MISHLER, CH. J.-Stip. on Order dtd 9-17-75 that the time for deft Roosevelt Raceway, Inc. to answer the complaint is extended to 9-30-75 filed.	(4)
10-22/75		By MISHLER, CH. J- Order dated 9/19/75 filed that the time for the deft Roosevelt Raceway, Inc. to answer the complaint is extended to Oct. 16, 1975	(5)
10-23-75		Notice of motion for a protective order ret 10-10-75 filed.	(6)
10-6/75		Affidavit of Carol Noymer filed.	(7)
10-6/75		ANSWER of deft filed	(8)
10-6/75		Stipulation dated 10/1/75 filed that the time for the deft The N.Y. Racing Association , Inc. to answer the complaint is extended to Oct. 15, 1975	(9)
10-8-75		Affidavit of Jerome Bauer in opposition to pltff's motion for a protective order, etc. filed.	(10)
10-14/75		ANSWER of deft Roosevelt Raceway, Inc. filed.	(11)
10-16/75		By MISHLER, CH. J.- Memorandum of Decision and Order dated 10/10/75 filed that pltff's motion for an order protecting the pltff's cause of action from dismissal, etc. is denied. P.C. mailed to the attys.	(12)
10-20-75		Notice of motion for summary judgment in favor of deft N.Y. Racing Association, ret 11-7-75 at 10 A.M. filed.	(13)
10-20-75		Affidavit of Ira A. in opposition to pltff's motion for a protective order filed.	(14)
10-21-75		Affidavit of Patrick W. O'Brien filed. (mg)	(15)
10-21-75		Memorandum in support of the NY Racing Association filed. (mg)	(16)
10-22/75		Notice of Motion, ret. 11/4/75 filed re: to dismiss,etc.	(17)
10-22/75		Statement under General Rule 9(b) filed.	(18)
10-22/75		Memorandum of Law in Support of Motion of Deft filed.	(19)
10-22/75		Notice of Motion , ret. 11/7/75 filed re: to dismiss, etc	(20)
10-22/75		Memorandum of Law in Behalf of Deft Gimma filed	(21)
10-28-75		Pltff's objections to motion for summary judgment filed. (mg)	(22)
10-28-75		Pltff's objection to motion to dismiss filed. (mg),	(23)
10-3-75		Counter affidavit in opposition to defts' motions to dismiss and/or for summary judgment filed.	(24)
10-3-75		Pltff's brief in opposition to defts' motions to dismiss and/or for summary judgment filed.	(25)
10-7/75		Before MISHLER, CH. J.- Case called- Deft's motion dismissing the complaint, etc.. argued- Decision reserved.- Defts motion for Summary Judgment argued- Decision reserved.	(26)
10-21-75		Pltff's objection to motion to dismiss filed. (mg)	(27)
10-3/75		By MISHLER, CH.J.- Memorandum of Decision and Order dated 12/2/75 filed that motion of defts N.Y. Racing Assoc. and Roosevelt Raceway & J. Gimma for summary judgment is granted. P.C. mailed to the attys.	(28)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
LUCIO P. SALVUCCI	NEW YORK RACING ASSN.	PAGE ____ OF ____ PAGE
DATE	NR.	PROCEEDINGS

12-4-75		JUDGMENT dtd 12-3-75 dismissing the complaint filed. (9)
12-30-75		Notice of appeal filed. (N.Y. Racing Assn., N.Y. City Off-Track Betting Corp., & Roosevelt Raceway Inc) Copy mailed to C of A. Forms C & D forwarded. (mg) (30)
12-30-75		Bond on appeal filed. (mg) (31)
12-30-75		Certificate of service of notice of appeal & stip. of withdrawal filed. (mg) (32)
12-30-75		Stip. of withdrawal of atty for pltff filed. (mg) (33)
1-13-76		By MISHLER, CJ-Stip. of withdrawal of atty dtd 1-12-76 filed. (34)

UNITED STATES DISTRICT COURT
FOR THE
EASTERN
DISTRICT OF NEW YORK

LUCIO P. SALVUCCI.)
VS. Plaintiff)
THE NEW YORK PACING ASSN., INC.;)
NEW YORK CITY OFF-TRACK)
BETTING CORP., ROGERSVILLE, PENNSYLVANIA,)
INC.; AND JOSLEIN A. CLIFF, JR. HE)
IS CHAIRMAN OF THE NEW YORK STATE)
RACING COMMISSION.
Defendants

The plaintiff, Lucio P. Salvucci,
say as follows:

COURT OF:

1. That this cause arises under the United States Copyright Laws, 17 U.S.C. Section 101 thereof and that this Court has jurisdiction of the cause pursuant to 28 U.S.C. Section 1338 (A).
2. That plaintiff is a citizen of the United States and a resident of the Town of Weymouth, Norfolk County, in the State of Massachusetts.
3. That defendant, The New York Pacing Assn. Inc. is a corporation duly organized and existing under the laws of the State of New York.
4. That prior to March 30, 1962, plaintiff put into words a creative expression of exotic wagering on horses or dogs entitled Tri-3 and Tri-3 Double.
5. This creative work contains materials wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

6. Between March 30, 1962 and April 2, 1962 plaintiff complied in all respects with the copyright laws of the United States and all other laws governing copyright and secured the exclusive rights and privileges in and to the copyright of said work and received from the Register of Copyrights a certificate of registration dated and identified as follows:

Class Registration No.
A 555005 Tri-3 Double dated April 2, 1962
A 555006 Tri-3 dated April 2, 1962

7. Since April 2, 1962 plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright of said work.

8. After April 2, 1962 plaintiff made a presentation of his said creative work to defendant, it's agents, servants or employees for the purpose of explaining it to defendant with the expectation that defendant would enter into a contract with plaintiff whereby plaintiff would enjoy a monetary return on his creative work. Defendant after having access to plaintiff's work began using plaintiff's copyrighted work and ignored the plaintiff's rights therein.

9. After April 2, 1962 defendant infringed said copyright by using a material appropriation of plaintiff's sequential order of finish entitled Big Triple and Triple copied from plaintiff's copyright entitled Tri-3 and Tri-3 Double.

10. A copy of plaintiff's copyrighted material is hereto attached as Exhibit A and a copy of defendant's infringement is hereto attached as Exhibit B.

11. Plaintiff has notified defendant that defendant has infringed the copyright of the plaintiff and defendant has continued to infringe the copyright.

12. After April 2, 1962 and continuously since defendant has been selling, using and otherwise profiting from it's Big Triple and has thereby been engaging in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

13. That the acts of infringement complained of herein
were committed within the State of New York.

Wherefore, plaintiff demands:

1. That the defendant, his agents, and servants be enjoined permanently from infringing said copyright of said plaintiff in any manner and from publishing, using, marketing or otherwise gaining profit from the

2. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practice and unfair competition and to account for:

A. All gains, profits and advantages derived by defendant by said trade practices and unfair competition and

B. All gains, profits and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes but not less than \$250.00.

3. That defendant be required to pay to the plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

4. That plaintiff have such other and further relief as is just.

COUNT TWO

1. The plaintiff adopts and by reference incorporates herein all of the allegations contained in paragraphs 1 and 2 of Count One.

2. That defendant, **New York City Off-Track Betting Corp.** is a corporation duly organized and existing under the laws of the **State of New York.**

3. The plaintiff adopts and by reference incorporates herein all of the allegations contained in paragraphs 4 through 7 inclusive ~~and 9 through 13 inclusive~~ of Count One.

Wherefore, plaintiff demands:

1. That the defendant, his agents, and servants be enjoined permanently from infringing said copyright of said plaintiff in any manner and from publishing, using, marketing or otherwise gaining profit from the **Big Triple and Triple.**

2. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practice and unfair competition and to account for:

A. All gains, profits and advantages derived by defendant by said trade practices and unfair competition and

B. All gains, profits and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes but not less than \$750.00.

3. That defendant be required to pay to the plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

4. That plaintiff have such other and further relief as is just.

COUNT THREE

1. The plaintiff adopts and by reference incorporates herein all of the allegations contained in paragraphs 1 and 2 of Count One.

2. That defendant, Roosevelt Raceway, Inc. is a corporation duly organized and existing under the laws of the State of New York.

3. The plaintiff adopts and by reference incorporates herein all of the allegations contained in paragraphs 4 through 7 inclusive and 9 through 13 inclusive of Count One.

Wherefore, plaintiff demands:

1. That the defendant, his agents, and servants be enjoined permanently from infringing said copyright of said plaintiff in any manner and from publishing, using, marketing or otherwise gaining profit from the Trifecta.

2. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practice and unfair competition and to account for:

A. All gains, profits and advantages derived by defendant by said trade practices and unfair competition and

B. All gains, profits and advantages derived by defendant by his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes but not less than \$250.00.

3. That defendant be required to pay to the plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

4. That plaintiff have such other and further relief as is just.

COUNT FOUR

1. The plaintiff adopts and by reference incorporates herein all of the allegations contained in paragraphs 1 through 7 inclusive of Count One.

2. Defendant, **Joseph A. Gimma** or his successor in title is a resident of the State of **New York** and is the duly appointed and acting Chairman of the **New York State** Racing Commission and is a citizen of the State of **New York**.

3. That defendant, **Joseph A. Gimma** in his capacity as Chairman of the **New York State** Racing Commission has licensed the defendants, **New York Racing Association, Inc.; New York City Off-Track Betting Corp. and Roosevelt Raceway, Inc.**

to use plaintiff's copyright entitled **Tri-3 and Tri-3 Double under the names Big Triple, Triple an' Trifecta** thereby joining with said defendants in an infringement thereof.

4. That the acts of infringement complained of herein were committed within the State of **New York**.

Wherefore, plaintiff demands:

1. That the defendant, his agents, and servants be enjoined permanently from infringing said copyright of said plaintiff in any manner and from publishing, using, marketing or otherwise gaining profit from the **Big Triple, Triple and Trifecta**.

2. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and said unfair trade practice and unfair competition and to account for:

A. All gains, profits and advantages derived by defendant by said trade practices and unfair competition and

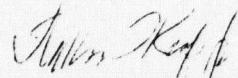
B. All gains, profits and advantages derived by defendant by his infringement of plaintiff's copyright or such

damages as to the court shall appear proper within the provisions of the copyright statutes but not less than \$250.00.

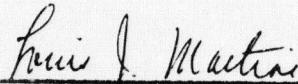
3. That defendant be required to pay to the plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

4. That plaintiff have such other and further relief as is just.

Attorneys for Plaintiff



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1359 Hancock Street
Winney, Massachusetts 02169
Tel: 617-479-9700



Louis J. Martine
Metzker & Martine
120 Broadway
New York, New York 10003
Tel: 212-732-8618

Dated: July 31, 1975

Certificate

Registration of a Claim to Copyright

in a published book manufactured in the United States of America

FORM A

CLASS	REGISTRATION NO.
A	555005
DO NOT WRITE HERE	

This is to Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

ABRAHAM L. KAMINSTINE

Register of Copyrights
United States of America

1. Copyright Claimant(s) and Address(es):Name LUCIO P. SALVUCCIAddress 746 COMMERCIAL ST. WEYMOUTH 89, MASS.

Name _____

Address _____

2. Title: TRI-3 DOUBLE

(Title of book)

3. Authors:Name LUCIO P. SALVUCCI

(Legal name followed by pseudonym if latter appears on copies)

Citizenship U. S. A.
(Name of country)Domiciled in U. S. A. Yes YES No 746 COMMERCIAL ST. WEYMOUTH 89, MASS.

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

4. Date of Publication of This Edition:March 30, 1962**5. New Matter in This Version:**

6. U. S. Edition of Book in English First Manufactured and Published Abroad: If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

Year date of first publication of foreign edition
(Year)

Was claim to ad interim copyright registered in the foreign edition?

 Yes No Yes No

If claim to ad interim copyright was not registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Complete all applicable spaces on next page

10

2. Deposit account:

3. Send correspondence to:

Name **LUCIO R. SALVUCCI**

Address **746 COMMERCIAL ST., WEXFORD, MASS.**

4. Send certificate to:

(Type or
print
name and
address) **Address**

LUCIO R. SALVUCCI

746 COMMERCIAL ST.

(Number and street)

WEXFORD

89

MASS.

(City)

(Zone)

(State)

Information concerning copyright in books

When To Use Form A. Form A is appropriate for published books which have been manufactured in the United States.

What Is a "Book"? The term "books" covers not only material published in book form, but also pamphlets, leaflets, cards, and single pages containing text. Books include fiction, nonfiction, poetry, collections, directories, catalogs, and information in tabular form.

Unpublished Books. The law does not provide for registration of "book" material in unpublished form. Unpublished books are protected at common law against unauthorized use prior to publication.

Duration of Copyright. Statutory copyright in published books lasts for 28 years from the date of first publication, and may be renewed for a second 28-year term.

How to secure statutory copyright in a book

First: Produce Copies With Copyright Notice. Produce the work in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

Second: Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as "... the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

Third: Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Con-

gress, Washington 25, D. C., two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$4.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1958. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

NOTE: It is the act of publication with notice that actually secures copyright protection. If copies are published without the required notice, the right to secure copyright is lost, and cannot be restored.

Books manufactured abroad

In General. Form A is not appropriate for books which have been manufactured outside the United States.

Foreign-Language Books. Applications covering foreign-language books by foreign authors, manufactured abroad, should be submitted on Form A-B Foreign.

English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full-term registration on Form A-B Foreign.

(1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has

been secured under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within six months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English language work by a foreign author first published abroad is eligible for full-term U. S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country; and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

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125169 APR-2 '62	

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TRI-3 DOUBLE

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1 2 and 3 in 2 races on horses or dogs.

The object of this TRI-3 DOUBLE is to select correctly the chosen finish positions in both races of the play or wager.

Winning tickets with the correct first three chosen positions (first half of the TRI-3 DOUBLE) must be exchanged for your selections on the second half of the TRI-3 DOUBLE.

The person(s) getting the most consecutive correct finish positions starting with their first chosen finish position on the first half of the TRI-3 DOUBLE ticket will be the winner.

COPYRIGHT LUCIO P. SALVUCCI, 1962

Certificate

Registration of a Claim to Copyright

in a published book manufactured in the United States of America

FORM A

CLASS	REGISTRATION NO.
A A 555906	
DO NOT WRITE HERE	

This Is To Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Abraham L. Kaminstein
ABRAHAM L. KAMINSTEIN
Register of Copyrights
United States of America

1. Copyright Claimant(s) and Address(es):

Name LUCIO P. SALVUGGI

Address 746 COMMERCIAL ST. WEYMOUTH 89, MASS.

Name _____

Address _____

2. Title: TRI-3

(Title of book)

3. Authors:

Name LUCIO P. SALVUGGI

(Legal name followed by pseudonym if latter appears on copies)

Citizenship U. S. A.
(Name of country)

Domiciled in U. S. A. Yes YES No 746 Address COMMERCIAL ST. WEYMOUTH 89, MASS.

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

4. Date of Publication of This Edition:

March 30, 1962

5. New Matter in This Version:

6. U. S. Edition of Book in English First Manufactured and Published Abroad: If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

Year date of first publication of foreign edition _____
(Year)

Was claim to ad interim copyright registered in the foreign edition?

Yes No

Yes No

If claim to ad interim copyright was not registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Complete all applicable spaces on next page

EXHIBIT A

7. Deposit account:

Send correspondence to:

Name **LUCIO P. SALVUCCI**

Address **746 COMMERCIAL ST., Weymouth, MA, MASS.**

Send certificate to:

(Type or
print
name and
address) **Name**

LUCIO P. SALVUCCI

Address

746 COMMERCIAL ST.

(Number and street)

WEYMOUTH
(City)

89
(Zone)

MASS.
(State)

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First: Produce Copies With Copyright Notice. Produce the work in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

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The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1958. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

NOTE: It is the act of publication with notice that actually secures copyright protection. If copies are published without the required notice, the right to secure copyright is lost, and cannot be restored.

Books manufactured abroad

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English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full-term registration on Form A-B Foreign.

(1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has

been secured under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within six months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English language work by a foreign author first published abroad is eligible for full-term U. S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country, and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

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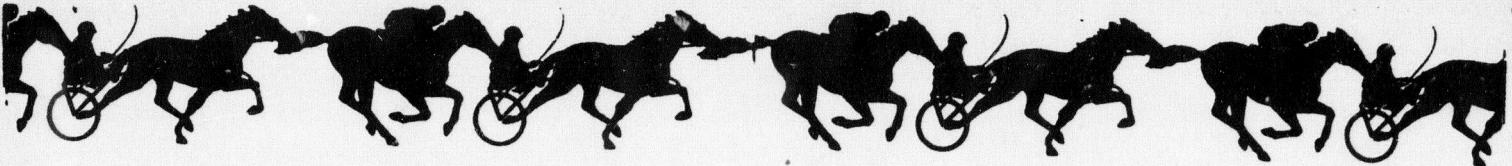
TRI-3

TRI-3 is a 3 finish position play or wager on horses or dogs.

The object is to select correctly all finish positions starting with your first chosen finish position of your TRI-3 ticket.

If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their first chosen finish position of their TRI-3 ticket is the winner.

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THE TRIPLE

3.7 A The Triple is a form of pari-mutuel bet. The object of the Triple is to select in order the first, second and third place horses in the designated triple race. The Triple pool shall be held entirely separate from all other pools and is no part of a daily double, exacta or other wagering pool.

B If a horse is scratched or declared a non-starter, no further Triple tickets may be issued designating such horse and all Triple tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

C In the event of a dead heat or dead heats, all Triple tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets and contrary to the show pool practice the aggregate number of winning tickets shall divide the net pool and be paid the same payoff price.

D Coupled entries and fields are prohibited in Triple pools.

E1 If there is no bet on a winning combination of a Triple pool, payoff shall be made on Triple tickets selecting the first two horses in order; failure to select the first two horses, payoff to Triple ticket holders selecting the winner to win; failure to select the winner to win shall cause a refund to all Triple ticket holders.

E2 If less than three horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

THE SUPERFECTA

3.8 A The Superfecta is a form of pari-mutuel wagering. Each bettor selects, in order, the first, second, third and fourth placed horses in the designated Superfecta race. The Superfecta pool shall be held entirely separate from all other pools, and is no part of a daily double, exacta, or other wagering pool.

B If a horse is scratched or declared a non-starter no further Superfecta tickets may be issued designating such horse and all Superfecta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

C In the event of a dead heat or dead heats, all Superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets, and, contrary to the usual practice, the aggregate number of winning tickets shall divide the net pool and be paid the same pay-off price.

D Coupled entries and fields are prohibited in Superfecta pools.

E1 If there is a failure to select, in order, the first four horses, pay-off shall be made to Superfecta ticket holders selecting the first three horses, in order; failure to select the first three horses, pay-off to Superfecta ticket holders selecting the first two horses, in order; failure to select the first two horses, pay-off to Superfecta ticket holders selecting the winner to win; failure to select the winner to win shall cause a refund to all Superfecta ticket holders.

E2 If less than four horses finish, pay-off shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

4. BRANCH OFFICE RULES

4.1 The Corporation shall appoint an officer, employee or agent of the Corporation to have management and control of each branch office.

4.2 A notice shall be displayed in a conspicuous location in every branch office setting forth the hours during which said branch shall be open for business.

4.3 In each branch office, there shall be exhibited such track, racing, and betting information as the Corporation shall determine.

4.4 The exhibiting of track, racing and betting information is solely for the convenience of the betting public, and the Corporation assumes no responsibility or liability for the accuracy of such information.

4.5 Notwithstanding any other rule, the person in charge of each branch office may at any time declare the branch office closed for receiving bets on any pari-mutuel pool, race, group of races, or closed for all betting.

4.6 All bets at branch offices shall be made with United States currency. The person in charge of any branch office may at his discretion, refuse to accept one or more forms of such currency.

4.7 The branch office may require that the bettor indicate on a printed betting slip provided or reasonable facsimile thereof, in clearly legible handwriting, the race track, amount of the bet, the type of bet, the race number, and the horse and such other information as may be from time to time specified by the Corporation. Such specified information must be in the form and format designated by the Corporation, e.g., in the event the Corporation specifies that horses are to be designated by letters instead of numbers then only such letter designation will constitute a valid horse selection.

4.8 Upon receipt of the money to be wagered and the information set forth in Section 4.7, the branch office shall issue a ticket to the bettor which shall show the information submitted by the bettor. The issuance of such ticket shall constitute acceptance of the bet, subject, however, to Section 4.9 and to said bet containing the information specified by the Corporation.

4.9 Any person making a bet shall be deemed to accept the ticket issued to him, unless a timely application is made to have any error or omission rectified by refund provided that the refund transaction is completed prior to the close of betting.

4.10 Any validly issued ticket may be presented for a refund by the holder thereof. A request for a refund shall be honored if, in the discretion of branch office personnel, the ticket is a valid pari-mutuel ticket of the Corporation and the refund transaction is completed prior to the close of betting for any bet listed on said ticket. A request for a refund shall also be honored in the event that the Corporation has not accepted the bet pursuant to the provisions of Section 4.8.

4.11 Any ticket presented for winnings, refund or for any other purpose, may be rejected without any payment being made thereon if it has been altered, defaced or mutilated. Any alteration to the ticket number or other information thereon identifying the bet renders the ticket void.

4.12 Where a ticket is incomplete, the characters undecipherable, or contains inconsistent data with respect to any



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
LUCIO P. SALVUCCI,

Plaintiff, :

vs. :

THE NEW YORK PACING ASSN. INC.; : Index No.
NEW YORK CITY OFF-TRACK : 75 Civ. 1236
BETTING CORP; POOSEYLT RACEWAY, : ANSWER
INC.; AND JOSEPH A. GIIMMA, AS HE : (J. Mishler)
IS CHAIRMAN OF THE NEW YORK STATE :
RACING COMMISSION,

Defendants. :

Defendant Off-Track Betting Corporatio, by its
attorney W. BERNARD RICHLAND answering the complaint
respectfully:

1. Denies each and every allegation set forth in
paragraph "1".

2. Denies knowledge and information sufficient to
form a belief as to the truth of the allegations set forth
in paragraph "2".

3. Denies knowledge and information sufficient to
form a belief as to the truth of the allegations contained
in paragraph "3".

4. Denies each and every allegation in paragraph
"4".

5. Denies each and every allegation in paragraph
"5" except deny knowledge and information sufficient to form
a belief as to the truth of plaintiff's allegation that he
complied with all applicable laws.

6. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "7".

7. Denies each and every allegation in paragraphs "8" and "9".

8. Denies each and every allegation in paragraph "10" and refer to defendants' exhibits for their full content and legal effect.

9. Denies each and every allegation in paragraph "11".

10. Denies each and every allegation in paragraphs "12" and "13".

11. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of Count Three.

12. Denies each and every allegation in paragraph "2" of Count 4 and affirmatively state that the New York State Racing and Wagering Board has general jurisdiction over all horse racing and betting activities.

13. Denies each and every allegation in paragraph "3" and respectfully refer the court to the New York Codes Rules and Regulations, Title 19, Ch. 11, Part 102 thereof entitled Pari-Mutuel Wagering.

AS AND FOR A FIFTH COMPLETE
DEFENSE DEFENDANT OTB RESPECT-
fully alleges:

14. The complaint fails to state a cause of action for which relief may be granted.

AS AND FOR A SECOND COMPLETE
DEFENSE DEFENDANT RESPECT-
FULLY ALLEGE;

15. Defendant OTB at all times acted pursuant to
the laws of the State of New York and the lawful regulations
promulgated thereunder.

WHEREFORE, defendant OTB respectfully demands
judgment in its favor dismissing the complaint, together with
the costs and disbursements of this action and for such
other and further relief as the Court deems just and proper.

Dated: New York, N. Y.
August 22, 1975

Respectfully,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendant OTB
Municipal Building
New York, N. Y. 10007
566-4217

By: -----
Carol Noymer
Assistant Corporation Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-X

LUCIO P. SALVUCCI,

CIVIL ACTION NO. 75C 1236

Plaintiff,

-against-

Judge J. Mishler

THE NEW YORK RACING ASSN., INC.,
NEW YORK CITY OFF-TRACK BETTING
CORP., ROOSEVELT RACEWAY, INC.,
and JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

A N S W E R

Defendants.

-X

Defendant, ROOSEVELT RACEWAY, INC., for its own
answer to the complaint:

1. Denies each and every one of the allegations
of Paragraph 1 of Count One of the complaint as the same relate
to it.
2. Denies knowledge or information sufficient to form
a belief as to the truth of the allegations of Paragraphs 2,
3, 4, 5, 6 and 7 of Count One of the complaint as the same relate
to it.
3. Denies Paragraph 8 of Count One of the complaint
as the same relates to it except that Plaintiff, through his
attorney, made Defendant, ROOSEVELT RACEWAY, INC., aware that
Plaintiff had knowledge of Defendant's activities at least as
early as August 2, 1972, and at that time informed said Defendant
of said Copyright Registration Nos. A-555005 and A-555006, and
that thereafter Plaintiff failed or refused to answer said
Defendant's written request for copies of each of said copyrighted
works.

4. Denies each and every one of the allegations of Paragraph 9 of Count One of the complaint as the same relate to it.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 10 of Count One of the complaint as the same relates to it to the effect that Exhibit A is a copy of Plaintiff's copyrighted material and denies the remaining allegations of this paragraph of the complaint as the same relate to it.

6. Denies each and every one of the allegations of Paragraph 11 of Count One of the complaint as the same relate to it except admits Plaintiff made Defendant aware of the Copyright Registration Nos. A-555005 and A-555006.

7. Denies each and every one of the allegations of Paragraph 12 of Count One of the complaint as the same relate to it except Defendant admits the use of Big Triple as a form of wagering.

8. Denies each and every one of the allegations of Paragraph 13 of Count One of the complaint as the same relate to it except Defendant admits it conducts its business within the State of New York.

9. Answers Paragraph 1 of Count Two of the complaint by repeating and realleging each and every one of the answers of Paragraphs 1 and 2 of this answer as the same relate to Paragraphs 1 and 2 of Count One of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 of Count Two of the complaint as the same relate to it.

11. Answers Paragraph 3 of Count Two of the complaint by repeating and realleging each and every one of the answers set forth with respect to Paragraphs 4 through 7 inclusive and Paragraphs 9 through 13 inclusive of Count One of the complaint.

12. Answers Paragraph 1 of Count Three of the complaint by repeating and realleging each and every one of its answers made to Paragraphs 1 and 2 of Count One of the complaint.

13. Admits Paragraph 2 of Count Three of the complaint.

14. Answers Paragraph 3 of Count Three of the complaint by repeating and realleging its answers made to Paragraphs 4 through 7 inclusive and Paragraphs 9 through 13 inclusive of Count One of the complaint.

15. Answers Paragraph 1 of Count Four of the complaint by repeating and realleging each and every one of its answers made to Paragraphs 1 through 7 inclusive of Count One of the complaint with the same force and effect as if the same were set forth herein in full.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Count Four of the complaint as the same relate to it.

17. Denies each and every allegation contained in Paragraph 3 of Count Four of the complaint insofar as the same relate to ROOSEVELT RACEWAY, INC. and denies upon information and belief each and every remaining allegation contained in Paragraph 3 of Count Four of the complaint insofar as the same relates to each and every other of the named Defendants.

18. Denies each and every allegation contained in Paragraph 4 of Count Four of the complaint as the same relate to it.

FIRST AFFIRMATIVE DEFENSE

19. Upon information and belief, Plaintiff is estopped to assert its alleged copyrighted material or to maintain its suit by reason of the delay and laches on the part of Plaintiff in bringing this suit.

SECOND AFFIRMATIVE DEFENSE

20. Upon information and belief, the claims set forth in the complaint, insofar as the same are related and directed to the Defendant, ROOSEVELT RACEWAY, INC., are barred by the applicable Statute of Limitations.

THIRD AFFIRMATIVE DEFENSE

21. The alleged infringing work annexed as "Exhibit B" to the complaint was neither published nor disseminated by Defendant, ROOSEVELT RACEWAY, INC., and there is no likelihood or threat or probability of any future publication or dissemination of the same by ROOSEVELT RACEWAY, INC.

FOURTH AFFIRMATIVE DEFENSE

22. The copyrighted works of "Exhibit A" alleged in the complaint and alleged to be infringed by the Defendant, ROOSEVELT RACEWAY, INC., are invalid because the same lack originality in that the same were known and in common use in the United States and elsewhere prior to March 30, 1962.

FIFTH AFFIRMATIVE DEFENSE

23. Defendant denies access to the copyrighted works set forth and alleged in the complaint to be infringed by Defendant, ROOSEVELT RACEWAY, INC., and further avers that access to said alleged copyrighted works was deliberately and purposefully withheld from and not supplied to Defendant, ROOSEVELT RACEWAY, INC., at its request for the same, all for the purpose of preventing said Defendant, ROOSEVELT RACEWAY, INC., from learning of the true nature and scope of said alleged copyrighted works of "Exhibit A" of the complaint.

SIXTH AFFIRMATIVE DEFENSE

24. Defendant avers on information and belief that the true nature and scope of the alleged copyrighted works of this Civil Action are and were unavailable to Defendant and to other members of the public such as to enable this Defendant, ROOSEVELT RACEWAY, INC., to determine whether in fact any similarity exists between Defendant's form of wagering and its "Big Triple" form of wagering and the alleged copyrighted works of "Exhibit A" of the complaint.

SEVENTH AFFIRMATIVE DEFENSE

25. That Defendant, ROOSEVELT RACEWAY, INC., does not now nor at the time of the filing of the complaint of this Civil Action use any form of wagering known as "Trifecta", "Tri-3" or "Tri-3 Double".

EIGHTH AFFIRMATIVE DEFENSE

26. Defendant denies any originality in the abstract ideas expressed in Plaintiff's alleged copyrighted works of

"Exhibit A" of the complaint and further denies that such ideas are subject to protection under the Copyright Laws such as to enable the request for relief here sought by Plaintiff.

Accordingly, Defendant, ROOSEVELT RACEWAY, INC., avers that the complaint fails to state a claim against it by Plaintiff upon which relief can be granted.

NINTH AFFIRMATIVE DEFENSE

27. Defendant denies it had access to Plaintiff's copyrighted works as set forth in "Exhibit A" of the complaint and that it used or copied the same and further affirmatively defends on the ground that the concepts and forms of multiple wagering made available to the public by Defendant are extensions of multiple wagering procedures that have been in use at Defendant and elsewhere long prior to Plaintiff's copyrighted works.

WHEREFORE, Defendant, ROOSEVELT RACEWAY, INC., demands judgment dismissing the complaint together with the costs and disbursements of this action, and for such other and further relief as to the Court may seem just and proper.

BAUER & AMER, P.C.

By Edgar A. Amer
A Member of the Firm
Attorneys for Defendant
ROOSEVELT RACEWAY, INC.
Office & P. O. Address
114 Old Country Road
Mineola, New York 11501

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer was mailed via First Class Mail, postage prepaid, to the following attorneys on the 10th day of October, 1975:

Stephen T. Keefe, Jr., Esq.
1359 Hancock Street
Quincy, Massachusetts 02169
Attorney for Plaintiff

Louis J. Martine, Esq.
McMahon & Martine, Esqs.
120 Broadway
New York, N. Y. 10005
Attorney for Plaintiff

Mortimer Sattler, Esq.
Assistant Attorney General
Two World Trade Center
New York, N. Y. 10047

W. Bernard Richland
Corporation Counsel
Municipal Building
New York, N. Y. 10007
Attn: Carol Noymer, Esq.

Ira A. Finkelstein, Esq.
Cahill, Gordon & Reindel, Esqs.
80 Pine Street
New York, N. Y. 10005
Attorneys for New York Racing Assn.

JEROME BAUER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
CIVIL ACTION

LUCIO P. SALVUCCI, Plaintiff, NO. 75 C 1936

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

J. Mishler

NOTICE OF MOTION

Defendants.

- - - - - X

S I R S :

PLEASE TAKE NOTICE, that upon the accompanying affidavit of GEORGE MORTON LEVY, JR., sworn to the 20th day of October, 1975, Defendant, ROOSEVELT RACEWAY, INC., will move this Court at the United States District Courthouse located at 225 Cadman Plaza East, Brooklyn, New York, on the 7th day of November, 1975, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint as to the named Defendant, ROOSEVELT RACEWAY, INC., for failure to state a claim upon which relief can be granted and for summary judgment upon the ground that there is no material triable issue of fact, and for such other relief as this Court may seem just and proper.

Dated: Mineola, New York
October 20, 1975

Yours, etc.,

BAUER, AMER & KING, P.C.

By Jerome Bauer
Jerome Bauer, Esq.
Attorneys for Defendant,
ROOSEVELT RACEWAY, INC.
114 Old Country Road
Mineola, New York 11501
(516) 746-1291

TO:

STEPHEN T. KEEFE, JR., ESQ.
1359 Hancock Street
Quincy, Massachusetts 02169
Attorney for Plaintiff

LOUIS J. MARTINE, ESQ.
MC MAHON & MARTINE, ESQS.
120 Broadway
New York, N. Y. 10005
Attorney for Plaintiff

MORTIMER SATTLER, ESQ.
Assistant Attorney General
Two World Trade Center
New York, N. Y. 10047

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Municipal Building
New York, N. Y. 10007
Attn: Carol Noymer, Esq.

IRA A. FINKELSTEIN, ESQ.
Cahill, Gordon & Reindel, Esqs.
80 Pine Street
New York, N. Y. 10005
Attorneys for New York Racing Assn.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
LUCIO P. SALVUCCI, CIVIL ACTION

Plaintiff, NO. 75 C 1936

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

A F F I D A V I T

Defendants.

- - - - - X
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

GEORGE MORTON LEVY, JR., being duly sworn, deposes
and says:

1. I am the President and one of the founders of
ROOSEVELT RACEWAY, INC. (ROOSEVELT RACEWAY), one of the named
Defendants in the above-mentioned civil action, and make this
affidavit in support of said Defendant's motion to dismiss
the complaint for failure to state a claim upon which relief
can be granted and for summary judgment.

2. At the time of and since the filing of the
complaint, ROOSEVELT RACEWAY offered and continues to offer
the following three (3) types of wagers:

- A. The regular win, place and show selections
- B. The "EXACTA" by which the bettor wins by
selecting the horses in their exact order
of first and second finish positions

C. The "TRIPLE" or "BIG TRIPLE" by which the bettor wins by selecting the first, second and third horses in their exact order of finish.

3. The aforescribed three forms of wagering are described in the daily Roosevelt Raceway Program, copy of the pertinent page of which is attached as Exhibit 1.

4. The "EXACTA" form of wagering was begun at ROOSEVELT RACEWAY on July 15, 1965, and is still being offered. The "TRIPLE" or "BIG TRIPLE" form of wagering was started on March 3, 1971, and is still being offered.

5. The "TRIPLE" or "BIG TRIPLE" form of wagering is a mere obvious extension of the well-known "EXACTA" form of wagering. In the "TRIPLE" or "BIG TRIPLE" form of wagering, three finishing horses must be selected in their exact order of finish whereas the "EXACTA" form of wagering requires the selection of but the first two finishing horses.

6. In this regard, it is significant that the complaint is completely devoid of any reference to or claim of infringement by ROOSEVELT RACEWAY's offer of the "EXACTA" form of wagering which it has been conducting since 1965. Since Plaintiff does not claim the "EXACTA" form of wagering to be an infringement or unfairly competitive with his copyrighted works, it is clear that the "TRIPLE" and "BIG TRIPLE" form of wagering must be similarly treated.

7. I have read the Certificates of Copyright Registration Nos. 555,005 and 555,006 attached to the complaint as Exhibit A. Registration No. 555,005 is titled "TRI-3 DOUBLE". ROOSEVELT RACEWAY does not offer any form of wagering known by

such title nor has it ever offered any form of wagering known by such title. Moreover, ROOSEVELT RACEWAY does not use the title in any manner whatsoever nor has it ever used the same in the past. ROOSEVELT RACEWAY does not describe any of its forms of wagering using the language of Plaintiff in his alleged description of the "TRI-3 DOUBLE" and, therefore, does not infringe the same.

8. Registration Certificate No. 555,006 is titled "TRI-3". ROOSEVELT RACEWAY does not offer nor has it ever offered any form of wagering known by such title nor does it now describe nor has it ever described the title in any of its publications. ROOSEVELT RACEWAY does not describe any of its forms of wagering using the language of Plaintiff in his alleged description of the "TRI-3" and accordingly, ROOSEVELT RACEWAY does not infringe such Copyright Registration.

9. The only published descriptions of the forms of wagers offered by ROOSEVELT RACEWAY are those contained in its "Exhibit 1" attached.

10. I have read the "Exhibit B" annexed to the complaint. ROOSEVELT RACEWAY does not now nor did it ever participate in the authorship, publication or distribution of such Exhibit B nor did it ever authorize others to author, publish or disseminate the same in any manner whatever.

11. There seems to be some inference in the complaint that ROOSEVELT RACEWAY offers forms of wagering known as "TRI-3" and "TRI-3 DOUBLE". ROOSEVELT RACEWAY has never at any time since its founding offered forms of wagering known by such names. Moreover, ROOSEVELT RACEWAY has never been licensed

by anyone to offer forms of wagering known by such names and
has no knowledge of any forms of wagering known by such names.

J. M. L.

GEORGE MORTON LEVI, JR.

Sworn to before me this
20th day of October, 1975.

George M. Levi

Notary Public

JEROME BAUER
NOTARY PUBLIC, State of New York
No. 30 5216450
Qualified in Nassau County
Term Expires March 30, 1980

WAGERING INFORMATION

There are three types of wagers to be offered at Roosevelt Raceway. In addition to regular win, place, and show wagering, Roosevelt Raceway also offers wagering on exactas and triples as described below:

THE EXACTA: If the two horses you have selected finish first and second in the **exact** order, you will collect the winnings as posted.

THE TRIPLE If the three horses you have selected are first, second and third in the **exact** order of finish, you will collect the winnings as posted.

Denominations of wagers:

Exactas will be sold in denominations of \$2, \$10, and \$20 in the second and third races and \$3, \$10 and \$20 in the sixth and seventh races. Triples will be sold in \$3 denominations for single wagers and \$18 for all box wagers.

Straight bets will be sold in denominations of \$2, \$10, \$50, and \$100, as well as \$10 (\$5 win - \$5 place) combination tickets.

Signs in different colors (red, white, blue, yellow and green) are located over all betting windows to designate the denomination of wagers sold at those windows.

Rules on all forms of pari-mutuel wagering are posted prominently throughout the track as prescribed by the New York State Racing and Wagering Board.

NOTE—In the event of a scratch in the Triple, no exchanges will be made. No refunds will be made on the night of the race but will be made any time thereafter up to March 31, 1976 upon presentation at windows designated for such refunds.
Roosevelt Raceway retains the right to make pay-offs either in cash or by check to holders of winning Triple tickets. Pay-offs of \$3,000 or over will be made by check only. On pay-offs of over \$900, two valid identifications are required, one of which must be a social security card. The identification is for the use of the Internal Revenue Service and any misrepresentation or false statement made herein is a violation of Title 18 and Title 26 U.S. code which carries a maximum penalty of \$10,000 fine or five years in prison or both.

Announcing Roosevelt Raceway's NEW VERY IMPORTANT PATRON PROGRAM

FOR THE CLOUD CASINO OR THE PROMENADE CAFE
including admissions, full-course dinner, tips & taxes

GIFT GIVING . . . CLUB OUTINGS . . . FUND RAISING . . . EMPLOYEE GROUPS
... SALES INCENTIVE . . . FAMILY PARTIES . . . BUSINESS GIFTS . . . HOLIDAYS
... AWARDS . . . OR, JUST A NIGHT OUT FOR A V.I.P.

V. I. P. tickets are good any Monday thru Thursday during the 1975 Racing Year with advance reservation (subject to space availability) NO REFUNDS . . . EXCHANGES . . . OR SUBSTITUTIONS.

GOLD V.I.P. TICKETS INCLUDE PRIME RIBS OF BEEF DINNER

SILVER V.I.P. TICKETS INCLUDE CHICKEN, POT ROAST, OR FISH DINNER

Mail tickets to:

ORDER FORM

NAME CLOUD CASINO-GOLD . . . x \$12.00 # \$

ADDRESS CLOUD CASINO-SILVER . . . x \$10.00 # \$

ZIP PROMENADE-GOLD . . . x \$10.00 # \$

TELEPHONE PROMENADE-SILVER . . . x \$ 8.00 # \$

Checks payable: ROOSEVELT RACEWAY, INC.
c/o Party Department
Westbury, N.Y. 11590

Gift Cards . . . x \$.25 # \$

Check enclosed for total of \$

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing
Notice of Motion and Affidavit were mailed via First Class
Mail, postage prepaid, to the following attorneys on the
21st day of October, 1975:

Stephen T. Keefe, Jr., Esq.
1359 Hancock Street
Quincy, Massachusetts 02169
Attorney for Plaintiff

Louis J. Martine, Esq.
McMahon & Martine, Esqs.
120 Broadway
New York, N. Y. 10005
Attorney for Plaintiff

Mortimer Sattler, Esq.
Assistant Attorney General
Two World Trade Center
New York, N. Y. 10047

W. Bernard Richland, Esq.
Corporation Counsel
Municipal Building
New York, N. Y. 10007
Att: Carol Noymer, Esq.

Ira A. Finkelstein, Esq.
Cahill, Gordon & Reindel, Esqs.
80 Pine Street
New York, N. Y. 10005
Attorneys for New York Racing Assn.

Jerome Bauer

JEROME BAUER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
CIVIL ACTION

LUCIO P. SALVUCCI,

Plaintiff,

NO. 75 C 1936

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

Defendants.

- - - - - X

STATEMENT UNDER GENERAL RULE 9(g)

Defendant, ROOSEVELT RACEWAY, INC., submits there is no genuine issue as to the following material facts:

1. Defendant, ROOSEVELT RACEWAY, INC., does not now offer nor has it ever offered any form of wagering known by the titles "TRI-3" or "TRI-3 DOUBLE" nor has Defendant, ROOSEVELT RACEWAY, INC., ever described the same in any printed publication.

2. Defendant, ROOSEVELT RACEWAY, INC., does not now nor did it ever author, publish or describe the document identified as "Exhibit B" attached to the complaint.

Respectfully submitted,

BAUER, AMER & KING, P.C.

By Jerome Bauer
Jerome Bauer, Esq.
Attorneys for Defendant,
ROOSEVELT RACEWAY, INC.
Office & P. O. Address
114 Old Country Road
Mineola, New York 11501
(516) 746-1291

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Statement Under General Rule 9(g) was mailed via First Class Mail, postage prepaid, to the following attorneys on the 21st day of October, 1975:

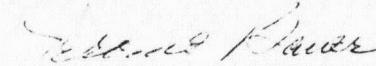
Stephen T. Keefe, Jr., Esq.
1359 Hancock Street
Quincy, Massachusetts 02169
Attorney for Plaintiff

Louis J. Martine, Esq.
McMahon & Martine, Esqs.
120 Broadway
New York, N. Y. 10005
Attorney for Plaintiff

Mortimer Sattler, Esq.
Assistant Attorney General
Two World Trade Center
New York, N. Y. 10047

W. Bernard Richland, Esq.
Corporation Counsel
Municipal Building
New York, N. Y. 10007
Attn: Carol Noymer, Esq.

Ira A. Finkelstein, Esq.
Cahill, Gordon & Reindel, Esqs.
80 Pine Street
New York, N. Y. 10005
Attorneys for New York Racing Assn.



JEROME BAUER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

LUCIO P. SALVUCCI,

CIVIL ACTION

Plaintiff,

NO. 75 C 1936

-against-

J. Mishler

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

Defendants.

- - - - - X

MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF DEFENDANT, ROOSEVELT
RACEWAY, INC., TO DISMISS THE
COMPLAINT PURSUANT TO RULE 12(b) (6)
FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED AND FOR
SUMMARY JUDGMENT

BAUER, AMER & KING, P.C.
Attorneys for Defendant
ROOSEVELT RACEWAY, INC.
Office & P. O. Address
114 Old Country Road
Mineola, New York 11501

Of Counsel:

Jerome Bauer, Esq.
Myron Amer, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - X
CIVIL ACTION

LUCIO P. SALVUCCI,
Plaintiff,

NO. 75 C 1936

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

J. Mishler

Defendants.

- - - - - - - - - - - - - - - X

MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF DEFENDANT, ROOSEVELT
RACEWAY, INC., TO DISMISS THE
COMPLAINT PURSUANT TO RULE 12(b)(6)
FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED AND FOR
SUMMARY JUDGMENT

This memorandum is in support of the motion by
Defendant, ROOSEVELT RACEWAY, INC., hereinafter referred
to as "ROOSEVELT RACEWAY", to dismiss the complaint for
failure to state a claim upon which relief can be granted
and for summary judgment.

STATEMENT

Defendant, ROOSEVELT RACEWAY, operates a harness racing track at Westbury, New York, pursuant to license under the Laws of the State of New York.

The present civil action is allegedly brought by Plaintiff under the provisions of 17 U.S.C. 101 et seq of the Copyright Laws.

Plaintiff purports to own two (2) copyrights to ideas that relate to systems of betting on horses. One of the copyrights is titled "TRI-3". The other copyright is titled "TRI-3 DOUBLE". Copies of the purported copyright works are attached to the complaint as "Exhibit A".

Plaintiff makes no claim that Defendant, ROOSEVELT RACEWAY, uses or in any manner infringes upon the aforesaid titles of his works. Rather, the essence of Plaintiff's claim is contained in COUNT ONE, Paragraph 9 of his complaint wherein he alleges:

"9. After April 2, 1962 defendant infringed said copyright by using a material appropriation of plaintiff's sequential order of finish entitled Big Triple and Triple copied from plaintiff's copyright entitled Tri-3 and Tri-3 Double."

In paragraph 10 of "COUNT ONE" of the complaint, Plaintiff refers to "Exhibit B" attached to his complaint as "--a copy of defendant's infringement--"

Of the four "COUNTS" contained in the complaint, "COUNT THREE" is directed against Defendant, ROOSEVELT RACEWAY. COUNT THREE incorporates paragraphs 4 through 7 and 9 through 13 of "COUNT ONE". There is some vague and unclear reference to unfair competition in the "WHEREFORE" paragraph "2" of COUNT THREE.

POINT I

MOTION TO DISMISS PURSUANT TO RULE 12(b) (6)

Defendant, ROOSEVELT RACEWAY, moves to dismiss the complaint pursuant to Rule 12(b) (6) F.R.C.P. because the same does not state a claim upon which relief can be granted. Plaintiff's copyrights relate to multi-race wagering. He brings this action in the hope of preventing others from using the race wagering ideas, even though such ideas are old in themselves.

Plaintiff has brought similar actions against other racetracks based upon substantially the same complaint alleging substantially the same facts. In one such similar lawsuit titled Lucio P. Salvucci v. New Hampshire Jockey Club, Inc. et al C.A. No. 75-223 (United States District Court for the District of New Hampshire), on October 6, 1975, Judge Hugh Bownes dismissed the complaint on defendant's motion on the ground the same failed to state a cause of action. A copy of Judge Bownes' Order is annexed as

Exhibit 1 to this memorandum.

In his decision, Judge Bownes referred to the case of Briggs v. New Hampshire Trotting and Breeding Association, Inc., 191 F.Supp. 234 (D.N.H. 1960). In that case, plaintiff's brochure described a system in which bettors selected the winning horses for each of seven consecutive races. Plaintiff claimed a violation of his copyright by defendant who operated a "Pic-Six" wagering system. At pages 236 and 237 the Court said:

"In the present case, the action should be dismissed in part for the legally necessary reason that the statutes and Court decisions give no protection by copyright to sports, games or similar systems as distinguished from publications describing them. Another reason for dismissal is that the sport here involved is so elementary and ordinary that it is in the public domain and to afford protection would be to give to the author a monopoly way out of proportion to the originality and creativity involved."

It has long been held that ideas per se cannot be protected by or be the subject of a copyright.

Baker v. Selden, 101 U.S. 99 (1880).

The law relating to this point is further treated and discussed in the brief of co-defendant, The New York Racing Association, Inc., submitted in support of its motion to dismiss this complaint. Defendant, ROOSEVELT RACEWAY, adopts the arguments and position set forth in such brief as though the same were set forth in detail herein without repeating the same.

POINT II

DEFENDANT, ROOSEVELT RACEWAY, DOES NOT
INFRINGE UPON PLAINTIFF'S COPYRIGHT WORKS

The Court is respectfully referred to the affidavit of Mr. George Morton Levy, Jr., founder and President of Defendant, ROOSEVELT RACEWAY. Mr. Levy's affidavit is submitted in support of the present motion.

It is clear that ROOSEVELT RACEWAY does not now nor has it ever offered any form of wagering known as "TRI-3" or "TRI-3 DOUBLE" nor does it use the language of Plaintiff as alleged to be contained in his descriptions of his copyrighted works.

ROOSEVELT RACEWAY does not now nor did it ever participate in the authorship, publication or distribution of the "Exhibit B" attached to Plaintiff's complaint.

POINT III

THERE IS NO UNFAIR COMPETITION

As noted previously, there is some vague, unclear reference to unfair competition.

Plaintiff is not licensed to in any manner operate a wagering or race track establishment within the territory of the State of New York. Plaintiff makes no allegation which would appear to place him in competition with or as a rival for the business of Defendant, ROOSEVELT

RACEWAY. Plaintiff shows no basis in his complaint that would purport to place him in a business rivalry with the Defendant, ROOSEVELT RACEWAY. In the absence of such competition or competitive relationship, there can be no unfair competition as a result of which Plaintiff can allege any damage. Accordingly, any allegation that might be made upon the part of Plaintiff of unfair competition must be dismissed as a matter of law.

CONCLUSION

It is respectfully submitted that the complaint must be dismissed for failure to state a claim upon which relief can be granted. Defendant's request for summary judgment with respect to its non-use of the alleged copyrighted works and its non-competition with Plaintiff must be acknowledged in the form of summary judgment for Defendant.

Dated: October 20, 1975
Mineola, New York

BAUER, AMER & KING, P.C.
Attorneys for Defendant
ROOSEVELT RACEWAY, INC.
Office & P. O. Address
114 Old Country Road
Mineola, New York 11501

Of Counsel:

Jerome Bauer, Esq.
Myron Amer, Esq.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum of Law was mailed via First Class Mail, postage prepaid, to the following attorneys on the 21st day of October, 1975.

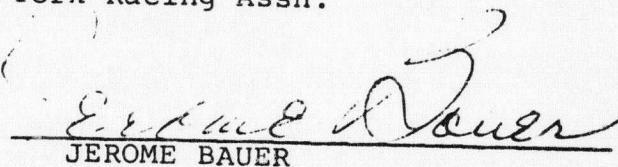
Stephen T. Keefe, Jr., Esq.
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Quincy, Massachusetts 02169
Attorney for Plaintiff

Louis J. Martine, Esq.
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Attn: Carol Noymer, Esq.

Ira A. Finkelstein, Esq.
Cahill, Gordon & Reindel, Esqs.
80 Pine Street
New York, N. Y. 10005
Attorneys for New York Racing Assn.


JEROME BAUER

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

| | | |
|---|---|-------------------------|
| <u>Lucio P. Salvucci</u> | } | Civil Action No. 75-223 |
| v. | | |
| <u>New Hampshire Jockey Club, Inc., et al</u> | } | |
| <u>Lucio P. Salvucci, et al</u> | } | Civil Action No. 75-224 |
| v. | | |
| <u>New Hampshire Jockey Club, Inc., et al</u> | } | |

O R D E R

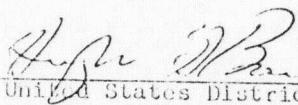
1. Both cases are dismissed as to Timothy Connors. The plaintiffs have sued "as he is, Chairman of the New Hampshire Racing Commission." Since the action against Mr. Connors is really an action against the State of New Hampshire, the complaints are dismissed on the ground of sovereign immunity.

2. Both cases are dismissed for failure to state a cause of action. The basis of both complaints is that the plaintiffs have originated a wholly creative work protected by the copyright law which the defendants have appropriated. The work is a system of betting on horse races. It has long been established that ideas cannot be protected by a copyright. See, Briggs v. New Hampshire Trotting and Breeding Association, Inc., 191 F. Supp. 234 (D. N.H. 1960) and the cases cited therein. The only way to protect an original creative idea is by a patent. It is obvious that the plaintiffs' betting systems are not patentable.

I appreciate the difficulty a layman will have in understanding this opinion, but the law is crystal clear. It is my

opinion that it is futile for the plaintiffs to pursue this
matter further.

SO ORDERED.



United States District Judge

October 6, 1975

cc: Andrew Dunn, Esq.
Stephen T. Keefe, Jr., Esq.
John Ahlgren, Esq.

-2-

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
LUCIO P. SALVUCCI, :
Plaintiff, :
-against- : NOTICE OF MOTION
THE NEW YORK RACING ASSN., INC.; : 75 Civ. 1236
NEW YORK CITY OFF-TRACK BETTING :
CORP.; ROOSEVELT RACEWAY, INC.; :
AND JOSEPH A. GIMMA, AS HE IS :
CHAIRMAN OF THE NEW YORK STATE :
RACING COMMISSION, :
Defendants. :
-----x

S I R S :

PLEASE TAKE NOTICE that upon the affidavit of Patrick W. O'Brien, sworn to on the 15th day of October, 1975, with exhibits annexed thereto, the Complaint, the Rule 9(g) Statement of defendant The New York Racing Association Inc., and all prior papers and proceedings therein, the undersigned will move this Court before the Honorable Jacob Mishler, Chief Judge of the United States District Court for the Eastern District of New York at 10:00 A.M. or as soon thereafter as counsel can be heard on November 7, 1975, for an order, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure granting defendant The New York Racing Association Inc. summary judgment upon the ground that there is no genuine issue as to any material fact, that the Complaint herein fails to state a claim upon which relief can be granted and that defendant The New York Racing Association Inc. is entitled to judgment as a matter of law, and for such other relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to
Rule 9(c)(2) of the General Rules of this Court, opposing affi-
davits and answering memoranda shall be served upon the under-
signed at least three (3) days before the return date of this
motion.

Dated: New York, New York
October 15, 1975

Yours, etc.

CAHILL GORDON & REINDEL

By Tom R. Hogan
A Member of the Firm
Attorneys for Defendant
The New York Racing Association Inc.
Office and P.O. Address:
80 Pine Street
New York, New York 10005
(212) 944-7400

TO:

LOUIS J. MARTINE, ESQ.
McMAHON & MARTINE
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New York, New York 10005

STEPHEN T. KEEFE, JR., ESQ.
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Quincy, Massachusetts 02169

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Attorney General of the State
of New York
Attorney for State Defendants
Two World Trade Center
New York, New York 10047

TO: (cont'd)

JEROME BAUER, ESQ.
BAUER, AMER & KING, P.C.
Attorneys for Defendant
Roosevelt Raceway, Inc.
114 Old Country Road
Mineola, New York 11501

W. BERNARD RICHLAND
Corporation Counsel, City of
New York
Attorney for New York City
Off-Track Betting Corp.
Municipal Building
New York, New York 10007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
LUCIO P. SALVUCCI,

Plaintiff, :

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

STATEMENT OF DEFENDANT
THE NEW YORK RACING
ASSOCIATION INC.
PURSUANT TO LOCAL RULE
9(g)

Defendants.

:

-----x
Defendant The New York Racing Association Inc.

("NYRA") respectfully submits that there are no genuine issues
to be tried as to the following material facts:

1. NYRA had absolutely nothing to do with the authorship, publication or dissemination (if any) of the document annexed to the complaint herein as Exhibit B, and alleged in paragraph 10 of Count One of the complaint to be "a copy of defendant's infringement."

2. In any event, the document referred to in paragraph 1 above does not infringe upon any of the alleged copyrights attached as Exhibit A to the complaint herein.

3. No publications by NYRA infringe upon any of the
alleged copyrights attached as Exhibit A to the complaint herein.

Dated: New York, New York
October 15, 1975

Respectfully submitted,
CAHILL GORDON & REINDEL

By Daniel R. Hoyer
A Member of the Firm
Attorneys for Defendant
The New York Racing Association Inc.
Office and P.O. Address:
80 Pine Street
New York, New York 10005
(212) 944-7400

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|----------------------------------|
| LUCIO P. SALVUCCI, | : | |
| Plaintiff, | : | |
| -against- | : | |
| THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION, | : | <u>AFFIDAVIT</u>
75 Civ. 1936 |
| Defendants. | : | |

STATE OF NEW YORK)
COUNTY OF) : ss.:

PATRICK W. O'BRIEN, being duly sworn, deposes and
says:

1. I am Vice President, Operations, of The New York
Racing Association Inc. ("NYRA"), a defendant in the above-
entitled action, and make this Affidavit in Support of NYRA's
motion to dismiss the complaint and for summary judgment.

2. Defendant NYRA is a non-profit racing association incorporated pursuant to Section 7902 of Title 21 of the Unconsolidated Laws of the State of New York, and operates thoroughbred race tracks at Aqueduct, Belmont Park, and Saratoga, New York. I have been employed by NYRA since 1954. During this period I have either supervised as an officer or had close contact with operations at NYRA's tracks, including parimutuel operations.

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3. NYRA is supervised by The New York State Racing and Wagering Board (the "Board"), a State agency created by the Legislature in 1973 for the purpose of supervising all authorized forms of racing in New York (thoroughbred, harness and quarter horse) as well as off-track betting corporations and the State Lottery, thus assuming the functions of a number of previously existing agencies supervising each activity, such as the State Racing Commission (thoroughbred) and the State Harness Racing Commission.

4. The Board strictly regulates the use and conduct of parimutuel wagering in New York. The privilege of conducting such wagering is available only to licensed racing associations and corporations, and to publicly-created off-track betting corporations. NYRA cannot unilaterally decide to implement any new form of parimutuel wager at its tracks. Only such forms of wager as are authorized by the Board in its official Rules and Regulations may be conducted by its licensees, and only according to the terms and conditions set by the Board.

5. At present, there are eight types of wagers approved by the Board for thoroughbred and harness tracks, which are separately codified* in the official Rules and Regulations of the Board, 9(D) New York Code of Rules and Regulations ("N.Y.C.R.R."), Subtitle T, Part 4011 (thoroughbred) and Part 4122 (harness), copies of which are attached as Exhibits

* Because these regulations were independently adopted, there are differences in language and emphasis between the authorizations for each type of racing.

1 and 2, respectively, to this affidavit. Aside from the familiar win, place and show bets, the remaining authorized wagers are (1) the Daily Double, in which the bettor must select the first place horses in each of two designated races (9(D) N.Y.C.R.R. §§ 4011.3, 4122.22); (2) the Exacta, in which the first and second place horses in a designated race must be selected in order of finish (Id., §§ 4011.20, 4122.39); (3) the Quinella, in which the first and second place horses in a designated race must be selected, irrespective of position (Id., §§ 4011.15, 4122.42); (4) the Triple (also called the Trifecta), in which the first three horses to finish in a designated race must be selected in order of finish (Id., §§ 4011.22, 4122.41); and (5) the Superfecta, in which the first four horses in a designated race must be selected in order of finish (Id., §§ 4011.21, 4122.40).

6. The Triple (or Trifecta) (Exhibit 1, § 4011.22) was authorized for thoroughbred racing on August 28, 1973, and NYRA first began accepting Triple wagers on October 15, 1973. (Upon information and belief, the Triple had been authorized for harness tracks on March 1, 1971.)

7. NYRA has no record or recollection of any contact or correspondence with plaintiff prior to the time he began pressing his copyright claim by letter in June, 1974. NYRA has no record or recollection of any "presentation" by plaintiff to it, its officers, agents, servants or employees for the purpose of "explaining" any creative work, as is alleged in paragraph 8 of Count One of the Complaint in this action. In fact, NYRA did not have the slightest idea of what plaintiff was talking about with respect to his copyright claim until receipt of the Summons and Complaint in August, 1975, when it first became apparent that

plaintiff was claiming that NYRA's conduct of the Triple infringed on a form of wager which he calls the "Tri-3" for which he claims copyright protection.

8. A copy of plaintiff's allegedly copyrighted work entitled "Tri-3" is attached hereto as Exhibit 3. There is absolutely nothing original about the concept expressed in this work. A form of wager in which the first three finish positions must be selected in order is perfectly obvious, and is merely an extension and variation of the familiar Exacta, in which the first and second place horses must be selected in order. Still another variation of the Exacta is the Superfecta, in which the first four horses must be selected. Plaintiff does not (as yet) claim to hold copyrights on the ideas for the Exacta or the Superfecta.

9. Indeed, the Triple was in use long prior to plaintiff's claimed copyright of his "Tri-3" in 1962. Thus, versions of it have been quite popular in France since 1954 as the Tierce, as is demonstrated by an article appearing in the March 1, 1971 issue of The Blood-Horse, a leading thoroughbred magazine (attached hereto as Exhibit 4):

"In 1954, Andre Carrus of the PMU developed the Tierce (the Tierce pool is divided so that players who pick the first three horses in the correct order of finish receive an 'exact order' dividend which is five times the 'basic' dividend returned to players who pick the same three horses, but in the five other possible orders of finish)." (Exhibit 5 at p. 748)

10. Further, plaintiff's "Tri-3" makes no mention of a feature which has proved popular in NYRA's conduct of the Triple - a single \$12 "Box Triple" ticket - in which the bettor covers all possible winning combinations among the three horses which he designates. The Box Triple is described in a notice which

appears in the Official Program published by NYRA for each day of races, a copy of which is attached hereto as Exhibit 5.*

11. NYRA has never described the Triple in the language utilized by plaintiff to describe his "Tri-3", or in any similar language. Indeed, the only published descriptions by NYRA of the Triple of which I have knowledge are the notice appearing in the Official Program referred to in Paragraph 10 above (Exhibit 5 hereto) and a description in NYRA's educational pamphlet, "The ABC's of Thoroughbred Racing" (attached as Exhibit 6 hereto), neither of which bear any resemblance to any of plaintiff's work.

12. Plaintiff attaches to his Complaint a single page, identified as Exhibit B, which he describes as "a copy of defendant's infringement." NYRA had absolutely nothing to do with the authorship, publication or dissemination of plaintiff's Exhibit B (a copy of which is attached hereto as Exhibit 7). NYRA certainly has never released any document containing pictures or drawings of trotters, as this document does. Examination of Exhibit B leads me to conclude that it would appear to be pages 10 and 11 of a booklet of rules published by one of the off-track betting corporations, as the references to "the Corporation" and to "branch offices" indicate. NYRA has no branch offices. In any event, the description of the Triple contained in Exhibit B is quite similar to that contained in the Rules of the Board

* Plaintiff could not possibly be referring to the Box Triple when he refers to the "Big Triple." The Box Triple has nothing whatsoever in common with plaintiff's work, the "Tri-3 Double."

(see Exhibit 1, § 4011.22 and Exhibit 2, § 4122.41 hereto), and bears no similarity to plaintiff's description.

13. Plaintiff also claims NYRA's conduct of the "Big Triple" infringes upon his "Tri-3 Double." (A copy of plaintiff's composition "Tri-3 Double," which is part of Exhibit A to his Complaint is attached hereto as Exhibit 8.) Quite simply, no wager by the name "Big Triple" has ever been authorized by the Board or any predecessor agency and NYRA could not have been conducting any by that name. Further, no wager of the type described in Exhibit 8 is authorized or conducted in New York.

Patricia Wilson

Sworn to before me this
5th day of October, 1975.

Thomas J. Profitt
Notary Public

PART 4011

THE DAILY DOUBLE

(Statutory authority: L. 1934, ch. 310, as amd.)

| Sec. | THE DAILY DOUBLE | Sec. | THE QUINELLA |
|---------|---|---------|---------------------|
| 4011.1 | [Reserved] | 4011.15 | The quinella |
| 4011.2 | Not a parlay | 4011.16 | Commission approval |
| 4011.3 | Prerequisites | | THE EXACTA |
| 4011.4 | Hurdle race, steeplechase not included | 4011.20 | Exacta |
| 4011.5 | Entries; fields | | THE SUPERFECTA |
| 4011.6 | Posting the pay-off | 4011.21 | Superfecta |
| 4011.7 | Calculation, distribution of pools | | THE TRIFECTA |
| 4011.8 | Failure to select a winner and race cancellations | 4011.22 | Trifecta |
| 4011.9 | Dead heats | | |
| 4011.10 | Effect—horse scratched, excused | | |

Historical Note

Part (§§ 4011.2-4011.10; 4011.15-4011.16; 12.2-12.10; 12.15-12.16; 12.20-12.22), filed Sept. 4011.20-4011.22) added by renum. Part (§§ 5, 1974 eff. Sept. 5, 1974.

THE DAILY DOUBLE

Section 4011.1 [Reserved]

4011.2 Not a parlay. The daily double is not a parlay and has no connection with or relation to the pool shown on the totalizator board.

Historical Note

Sec. added by renum. 12.2, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.3 Prerequisites. In order to win a daily double, it is necessary for the purchaser of a daily double ticket to select the winners of each of the two races specified for the daily double. If either of his selections fails to win, his contract is voided, except as hereinafter provided.

Historical Note

Sec. added by renum. 12.3, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

2049 EX 9-30-74

§ 4011.4

TITLE 9 EXECUTIVE

4011.4 Hurdle race, steeplechase not included. No hurdle race or steeplechase shall be included in the races comprising the daily double unless express written consent shall be given thereto by the commission upon written application therefor.

Historical Note

Sec. added by rnum. 12.4, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.5 Entries; fields. Entries and fields may be included in the first and second races of the daily double. In the event that part of the entry or field is scratched and there is at least one starter in the entry or the field, as the case may be, there shall be no refund.

Historical Note

Sec. added by rnum. 12.5, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.6 Posting the pay-off. The pay-off shall be posted after the result of the first race is declared "Official" and before the second race is run, except in the event of a dead heat in the first race, when the posting of the pay-off may be deferred until the second race has been run.

Historical Note

Sec. added by rnum. 12.6, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.7 Calculation, distribution of pools. The daily double pool shall be calculated and distributed as follows: the net pool divided by the amount wagered on the winning combination determines the pay-off per dollar bet.

Historical Note

Sec. added by rnum. 12.7, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.8 Failure to select a winner and race cancellations. (a) If no daily double ticket is sold designating the winner of the first race, or the first race is cancelled or declared "no race", the daily double shall be declared off and the gross pool refunded.

(b) If no daily double ticket is sold combining the winners of the first and second races, or the second race is cancelled or declared "no race", the net pool shall be distributed to holders of tickets designating the winner of the first race, as in a win pool and the daily double shall terminate.

Historical Note

Sec. added by rnum. 12.8, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.9 Dead heats. (a) In the event of a dead heat either in the first race or second race of the daily double, two winning combinations result. The amounts wagered on both winning combinations are deducted from the net pool to determine the profit. This profit is divided in half, and the halves, in turn, divided by the two amounts mentioned above. This determines the profit per dollar, to which is added the amount of the wager.

(b) In the event of a dead heat in both races of the daily double, four winning combinations result. The amounts wagered on these four winning combinations are deducted from the net pool to determine the profit. This profit is divided into four equal parts, and each part, in turn, divided by the four amounts mentioned above. This determines the profit per dollar, to which is added the amount of the wager.

Historical Note

Sec. added by rnum. 12.9, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

2050 EX 9-30-74

SUBTITLE T RACING AND WAGERING BOARD

§ 4011.20

4011.10 Effect—horse scratched, excused. (a) Should any horse in the first or the second race of the daily double not coupled with a starter be scratched or excused by the stewards, before the running of the first race, all money wagered on combinations including such horse shall be deducted from the daily double pool and shall be refunded upon presentation and surrender of pari-mutuel tickets sold thereon.

(b) Should any horse in the second race of the daily double not coupled with a starter, be scratched or excused by the stewards after the running of the first race of the daily double, a consolation pool will result. In such case, all tickets combining the scratched or excused horse with the actual winner of the first race shall become consolation tickets and shall be paid a price per dollar bet determined as follows: the net daily double pool shall be divided by the total purchase price of all daily double tickets designating the winner of the first race of the daily double and the result obtained shall constitute the consolation price per dollar bet. The amount set aside for these consolation pay-offs will be deducted from the net daily double pool.

Historical Note

Sec. added by renum. 12.10, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

THE QUINELLA

4011.15 The quinella. The object of the quinella is to select the first two horses in the official placing irrespective of the order in which they finish. The quinella is treated separately and calculated independently of all other pools. In the event of a deadheat for first position, the pool shall be paid to holders of tickets which combine the two horses involved in the deadheat. In the event of a deadheat for second position, two winning combinations result and the pool shall be divided equally between the holders of tickets which combine the winner with the horses involved in the deadheat for second position. In like manner, in the event of a triple deadheat for second position, three winning combinations would result. In the event of a triple deadheat for first position, three winning combinations would result. In the event no ticket is sold on the combination of the first two horses in the official placing, then the next horse or horses, in case of deadheats, in the order of official placing shall be included in the winning combination. In the event of a deadheat for second position and no ticket is sold on one of the horses involved, in the deadheat combined with the winner, the entire pool shall be paid to holders of tickets which combine the winner with the other horse in the deadheat. In the event there is a late scratch of either selection, money wagered thereon will be refunded following the running of the race. There shall be no entries in the races upon which quinella wagering is conducted.

Historical Note

Sec. added by renum. 12.15, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4011.16 Commission approval. Races in which quinella betting shall be conducted shall be approved by the commission.

Historical Note

Sec. added by renum. 12.16, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

THE EXACTA

4011.20 Exacta. (a) The object of the exacta is to select in order the first and second place finisher in the designated exacta race. The exacta pool shall be held entirely separate from all other pools and is in no way a part of the daily double, or win, place or show pools.

2051 EX 9-30-74

60

BEST COPY AVAILABLE

§ 4011.21

TITLE 9 EXECUTIVE

- (b) Races in which exacta betting shall be conducted shall be approved by the commission.
- (c) If a horse is scratched or excused from racing no further tickets shall be sold designating such horse and all tickets previously sold designating such horse shall be refunded and the money deducted from the gross pool.
- (d) *Dead heat.* (1) In the event of a dead heat for win the net pool shall be distributed to each combination of winners separately as in a win pool dead heat, e.g., in a dead heat of two horses there are two winning combinations, in a dead heat of three horses there are six winning combinations.
- (2) In the event of a dead heat for second the net pool shall be divided as in a win pool dead heat among holders of tickets combining the winner with each second place horse.
- (e) Coupled entries and fields are prohibited in exacta races.
- (f) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and/or holders of tickets selecting the second place horse to finish second.

Historical Note

Sec. added by renum. 12-20, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

THE SUPERFECTA

- 4011.21 Superfecta.** (a) The object of the superfecta is to select in order the first, second, third and fourth place horses in the designated superfecta race. The superfecta pool shall be held entirely separate from all other pools and is in no way a part of the daily double, exacta, or win, place or show pools.
- (b) Races in which superfecta betting shall be conducted shall be approved by the commission.
- (c) If a horse is scratched or excused from racing no further tickets shall be sold designating such horse and all tickets previously sold designating such horse shall be refunded and the money deducted from the gross pool.
- (d) If no ticket is sold designating, in order, the first four horses or if only three horses finish, the net pool shall be distributed equally among holders of tickets designating the first three horses, in order; if no ticket is sold designating, in order, the first three horses or if only two horses finish, the net pool shall be distributed equally among holders of tickets designating the first two horses, in order; and if no ticket is sold designating, in order, the first two horses, the net pool shall be distributed equally among holders of tickets designating the winner.
- (e) If no ticket is sold designating the winner to win, the superfecta shall be declared off and the gross pool refunded.
- (f) *Dead heat.* In the event of a dead heat or dead heats, all tickets designating the correct order of finish, crediting each horse in a dead heat as finishing in either position dead heated, shall be winning tickets; and the aggregate number of winning tickets shall be divided into the net pool for the purpose of determining the payoff.
- (g) Coupled entries and fields are prohibited in superfecta races.

Historical Note

Sec. added by renum. 12-21, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

THE TRIFECTA

- 4011.22 Trifecta.** (a) The object of the trifecta is to select in order, the first, second and third place horses in the designated trifecta race. The trifecta pool

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shall be held entirely separate from all other pools and is in no way a part of the daily double, exacta, superfecta, or win, place or show pools.

(b) Races in which trifecta betting shall be conducted shall be approved by the board.

(c) If a horse is scratched or excused from racing no further tickets shall be sold designating such horse and all tickets previously sold designating such horse shall be refunded and the money deducted from the gross pool.

(d) If no ticket is sold designating, in order, the first three horses, the net pool shall be distributed equally among holders of tickets designating the first two horses in order; if no ticket is sold designating, in order, first two horses the net pool shall be distributed equally among holders of tickets designating the first horse to win.

(e) If no ticket is sold designating the winner to win, the trifecta shall be declared off and the gross pool refunded.

(f) *Dead heat.* In the event of a dead heat, all tickets designating the correct order of finish, crediting each horse in a dead heat as finishing in either position dead heated, shall be winning tickets; and the aggregate number of winning tickets shall be divided into the net pool for the purpose of determining the payoff.

(g) Coupled entries and fields are prohibited in trifecta races.

(h) [Statutory authority: L. 1973, ch. 340, as amd.] No trifecta wagering shall be conducted on any race having less than 10 entries. In the event less than eight horses parade to the post or thereafter less than seven horses start the trifecta shall be declared off and the gross pool refunded.

PART 4122
PARI-MUTUEL WAGERING
 (Statutory authority: L. 1940, ch. 254, § 86, as amd.)

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Historical Note

Part (§ 4122.1-4122.37; 4122.39-4122.42) added Sept. 5, 1974 eff. Sept. 5, 1974.
 Part (§ 102.1-102.37; 102.39-4122.42) added Sept. 5, 1974 eff. Sept. 5, 1974.

Section 4122.1 Pari-mutuel wagering. Harness racing associations licensed by the commission to conduct harness racing meets with pari-mutuel betting shall use vending machines for the sale of pari-mutuel tickets, unless otherwise authorized by the commission.

Historical Note

Sec. added by renum. 102.1, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.2 Heat as race. For the purpose of pari-mutuel betting, every heat shall be a separate and distinct race.

Historical Note

Sec. added by renum. 102.2, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

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4122.3 Sale of pari-mutuel tickets. (a) Only one method of selling pari-mutuel tickets shall be used for the sale of tickets on individual heats or races during any racing day.

(b) No pari-mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that particular window.

(c) No pari-mutuel selling windows shall be closed nor shall the sale of pari-mutuel tickets be limited or restricted in any way for the purpose of impeding public participation in any wagering pool.

Historical Note

Sec. added by renum. 102.3, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.4 Time for wagering. No pari-mutuel tickets shall be sold for any pool more than one hour 15 minutes before post time of the first pari-mutuel race of the day.

Historical Note

Sec. added by renum. 102.4, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.5 Bookmaking. Bookmaking or betting other than pari-mutuel betting is strictly prohibited.

Historical Note

Sec. added by renum. 102.5, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.6 Betting by minors. No licensed association or corporation shall permit any person who is actually and apparently under 18 years of age to bet at a race meeting conducted by it.

Historical Note

Sec. added by renum. 102.6, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.7 Time for wagering to close. All wagering shall stop as soon as the word "go" shall be given either by record or by voice of the starter. Where vending machines for the sale of pari-mutuel tickets are used, they shall be electrically locked by the presiding judge from the judges' stand.

Historical Note

Sec. added by renum. 102.7, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.8 No wagering after close. When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race or heat has finished.

Historical Note

Sec. added by renum. 102.8, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.9 Denomination of pari-mutuel tickets. (a) No pari-mutuel ticket shall be sold for less than two dollars. No pari-mutuel ticket combining win and place, win and show or place and show, shall be sold for less than four dollars. No pari-mutuel ticket combining win, place and show shall be sold for less than six dollars.

(b) Upon permission granted by the commission, a pari-mutuel ticket combining win and place, win and show, or place and show, may be sold for three dollars and a pari-mutuel ticket combining win, place and show, may be sold for five dollars. The permission granted pursuant to this subdivision may be upon such conditions and for such period of time as the commission may prescribe.

Historical Note

Sec. added by renum. 102.9, Title 19, filed Sept. 5, 1974 eff. Sept. 5, 1974.

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4122.10 Method of wagering. The method of selling pari-mutuel tickets shall be approved by the Harness Racing Commission and the State Tax Commission. No employee of a licensed track assigned to or working in the pari-mutuel department shall accept a wager from any person except through the track's pari-mutuel windows and in the regular course of business.

Historical Note

Sec. added by renum. 102.10, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.11 Notice to pari-mutuel manager before wagering opens. The manager of the pari-mutuel department shall be properly and timely advised by the presiding judge prior to the beginning of wagering on each race, of the horses that will compete in the race and any driver changes from those listed in the official program.

Historical Note

Sec. added by renum. 102.11, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.12 Limited wagering fields. (a) If less than six interests qualify horses to start in a race, the manager of the pari-mutuel department, with the consent of the representative of the Harness Racing Commission, shall be permitted to prohibit show wagering on that race.

(b) If less than five interests qualify horses to start in a race, the said manager, with the consent of the representative of the Harness Racing Commission, shall be permitted to prohibit both place and show wagering on that race.

(c) If less than three interests qualify horses to start in a race, the said manager, with the consent of the representative of the Harness Racing Commission, shall be permitted to prohibit wagering on the race.

(d) The said manager, with the consent of the representative of the Harness Racing Commission, may prohibit wagering on any particular horse or entry in any race. Such consent shall be sought by the manager of the pari-mutuel department from the representative of the Harness Racing Commission after the entries are closed on the day previous to that which the heat or races in which exclusions are desired are to be conducted. Such exclusions if consented to by the representative of the Harness Racing Commission shall be clearly indicated on the program or score card and horses excluded shall be numbered so as to in no way infer that they are coupled in "the field". Horses once excluded from the betting shall remain excluded during the day or race in which they are scheduled to start.

Historical Note

Sec. added by renum. 102.12, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.13 Coupled entries wagering. When two or more horses which are owned in whole or in part or trained by the same person or trained in the same stable or by the same management, start in a race, they shall be coupled as an "entry" and a wager on one shall be a wager on all of them.

Historical Note

Sec. added by renum. 102.13, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.14 Field wagering. When more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one less than the total number of post positions on the infield tote board shall be grouped in the betting as the field.

Sec. added by renum. 102.14, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

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4122.15 Payments. (a) Payments due on all wagers shall be made in conformity with well established practice of the pari-mutuel system. The practice is to work in dollars and not in the number of tickets. Money wagered on winning tickets is returned in full plus the profits. In all cases of a winning mutuel pool, each association must redistribute not less than \$1.05 on each one dollar wager and \$2.10 on each two dollar wager.

(b) Payments on all winning pari-mutuel tickets and tickets refundable according to rules shall be made only on presentation and surrender of appropriate ticket. Mutilated tickets and those whose validity are questioned shall be submitted to the New York State Tax Commission for inspection.

(c) Payments may be made by cash or by check to the holder of a winning pari-mutuel ticket.

Historical Note

Sec. added by renum. 102.15, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

Decisions**1. Payment on stolen ticket**

In an action to recover from defendant raceway the amount due on an identifiable, winning pari-mutuel ticket stolen from plaintiff, which amount had been paid to a third person upon presentation and surrender of the ticket despite due notice of the theft, it was held that defendant had no duty to withhold payment merely because plaintiff claimed the ticket was stolen. Implicit in the Pari-Mutuel Law (L. 1940, ch. 254) is the right to make payment on a winning ticket immediately upon presentation and surrender without being subject to liability to a third person making claim thereto. *Epps v. Yonkers Raceway, Inc.*, 21 A D 2d 792 (1964), revg. 42 Misc 2d 53 (1964).

2. Responsibility of patron to retain possession of winning ticket until cashed

Held under section 102.15(b) of the rules and regulations of the State Harness Racing Commission (9 NYCRR 102.15(b) (cf. 9 NYCRR 4122.15)) that upon presentation of a winning ticket to a raceway identification clerk it was patron's responsibility to see to it such ticket was returned to him. In an action against defendant raceway plaintiff patron alleged he had held a winning ticket, but upon attempting to cash it discovered defendant's identification clerk had apparently switched it for another granted for defendant. *Mills v. Roosevelt Raceway*, 39 Misc 2d 338 (1960).

4122.16 Official result of race to be reported and effect thereof. At the end of each race, the judges shall determine the proper order of finish and upon such determination having been made the public shall be so informed by the word "official" being lighted on the tote board in the infield of the track or upon failure of such device by public announcement. Upon the lighting of such word "official" or upon its public announcement the result of the race for pari-mutuel purposes shall be final and no appeal therefrom shall be allowed. Any ruling of the judges or of the Harness Racing Commission with regard to the award of purse money made after the sign "official" has been purposely displayed shall have no bearing on the mutuel pay-off. The judges shall advise the manager of the pari-mutuel department and the representative of the State Tax Commission and the Harness Racing Commission in writing of the official placement of the horses. When no mechanical or electrical indication of the official finish of the race is used between the judges and the mutuel department, no payoff shall be made until receipt of such written notice.

Historical Note

Sec. added by renum. 102.16, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.17 Payment where no wagering on a position. (a) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of the place tickets on that horse, if any, otherwise holders of the show tickets.

(b) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

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(c) If no money has been wagered to show on a horse which has placed first, second or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second or third in that race.

Historical Note

Sec. added by renum. 102.17, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.18 Dead heats and coupled entries. (a) If two horses finish in a dead heat for first place, the money in the win mutual pool is divided between the two dead-heaters as in a place pool.

(b) If two horses finish in a dead heat for second place, the division is made as follows: there shall be allotted to the pool of the winner of the race one half of the place pool, and the two dead-heaters one half each of the remaining half of the place pool.

(c) If two horses coupled in the betting as an "entry" or "the field" finish first and second, first and third or second and third, the division of the net show pool shall be as follows: two thirds of the net show pool shall be allotted to the pool of the entry and the balance one third to the other horse.

(d) In the event that one horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one half of the net show pool shall be allotted to the pool of the entry, one third to the horse finishing first or second, and one sixth to the horse finishing in the dead heat with the entry for third.

(e) If the entry or field horses should finish first, second and third, the entire money in each pool goes to the entry or field tickets, no other tickets participating.

Historical Note

Sec. added by renum. 102.18, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.19 Incomplete finishes. (a) When only two horses finish a race the show pool, if any, shall be distributed the same as in a place pool.

(b) When only one horse finishes a race the place and show pools, if any, shall be distributed the same as in a win pool.

(c) In any race in which no horses finish all money wagered on the race shall be refunded.

Historical Note

Sec. added by renum. 102.19, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.20 Pay-off errors. (a) If an error is made in posting pay-off figures on the public board it may be corrected promptly and a statement explaining the facts made over the public address system.

(b) In the event of an error in calculations of pay-off prices which results in an underpayment to the public and payments have been made to the public, the amount of the underpayments made before a correction is posted shall transfer to the corresponding pool of the following race.

Historical Note

Sec. added by renum. 102.20, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.21 Time to present winning tickets. All winning pari-mutuel tickets must be presented for payment before April 1 of the year following the year of their

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purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to participate in the award or dividend.

Historical Note

Sec. added by renum. 102.21, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.22 Daily doubles. Unless otherwise authorized by the commission one daily double only shall be permitted during a single racing program.

Historical Note

Sec. added by renum. 102.22, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.23 Daily double terms. In order to win a daily double, it is necessary for the purchaser of a daily double ticket to select the winners of each of the two races specified for the double. If either of his selections fail to win, his contract is void, except as hereafter provided.

Historical Note

Sec. added by renum. 102.23, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.24 Daily double: failure to select a winner and race cancellations; dead heats; scratches. (a) If no daily double ticket is sold designating the winner of the first race, or the first race is cancelled or declared "no race", the daily double shall be declared off and the gross pool refunded.

(b) If no daily double ticket is sold combining the winners of the first and second races, or the second race is cancelled or declared "no race", the net pool shall be distributed to holders of tickets designating the winner of the first race, as in a win pool and the daily double shall terminate.

(c) In the event of a dead heat in either or both daily double races holders of daily double tickets combining winners in both such races shall be entitled to a distribution calculated as in a win pool dead heat.

(d) If a horse is scratched from the first or second daily double races before the running of the first daily double race all daily double tickets selecting the horse scratched shall be refunded and the money deducted from the gross pool.

(e) Should any horse be scratched or be declared a non-starter in the second half of the daily double after the first half of the daily double has been raced all tickets combining the scratched horse with the winner of the first half shall become consolation tickets and shall be paid at a price per dollar bet determined as follows: the net daily double pool (the gross daily double pool less tax) shall be divided by the total purchase price of all daily double tickets designating the winner of the first half of the daily double and the quotient obtained shall constitute the price to be paid. The total amount payable on consolation tickets shall be deducted from the net daily double pool.

(f) Coupled entries and fields are prohibited in the daily double.

Historical Note

Sec. added by renum. 102.24, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.25 Refunds and exchanges. Whenever a horse is scratched or declared a non-starter, and a refund is required under these rules, the tickets previously issued designating such horse shall be refunded or, at the option of the holder, may be exchanged for another selection of the same denomination in the same pool provided the track has an operating facility for such an exchange and conditions and circumstances, including available time remaining before the start, make an exchange

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feasible in the judgment of management. Refunds and exchanges shall be made at locations designated for the purposes by management and convenient for the public.

Historical Note

Sec. added by renum. 102.25 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.26 Effect of scratch. In all cases when a horse has been excused by the judges after wagering has started but before the horses shall have actually started, all money wagered on the horse so excused shall be deducted from the pool and refunded.

Historical Note

Sec. added by renum. 102.26 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.27 Coupled entry scratch. If, after wagering has begun on a race, a horse, programmed to start as part of a coupled entry or field is scratched in such race, all betting upon such coupled entry or field shall cease and all money theretofore wagered upon such coupled entry or field shall be refunded. Notwithstanding the termination of betting upon all horses which are part of such coupled entry or field, the horse or horses in such coupled entry or field which are not scratched shall start in such race as non-betting interests for the purse and the finish of such horses in the race shall be disregarded for pari-mutuel purposes. Such circumstances shall be announced by public address and explained to the public at the time of such action and thereafter as may be necessary to adequately inform the public.

Historical Note

Sec. added by renum. 102.27 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.28 Race declared off. In the case of a race being declared off or postponed to another day by the judges after the wagering has begun, all money wagered in that race shall be refunded.

Historical Note

Sec. added by renum. 102.28 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.29 Firms. The officers and employees of the licensed harness racing association shall promptly give the State Tax Commission and the Harness Racing Commission such information as they may request from time to time and shall freely and fully co-operate with them in every way.

Historical Note

Sec. added by renum. 102.29 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.30 Report of unpaid tickets. An itemized record of all unpaid winning mutuel tickets shall be prepared and a complete record thereof including total forwarded to the State Harness Racing Commission and the State Tax Commission within five days after the last day of any racing meeting.

Historical Note

Sec. added by renum. 102.30 Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.31 Report if no totalisator. The licensed harness racing association, if operating a mutuel system without the totalisator, shall, in taking off total of mutuel ticket sales, prepare an additional carbon copy thereof at the same time of making and furnish the same to the representative of the State Harness Racing Commission

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and the State Tax Commission before the calculations for mutual prices to be paid shall have been made.

Historical Note

Sec. added by renum. 102.31, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.32 Report of pay-off. Complete and detailed records of each race containing the actual pay-off on each horse shall be filed with the State Harness Racing Commission at the end of each day.

Historical Note

Sec. added by renum. 102.32, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.33 Report of attendance and handle. The licensed harness racing association shall supply daily to the State Harness Racing Commission, a report of the following: handle of each race, total daily handle and attendance.

Historical Note

Sec. added by renum. 102.33, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.34 Test of mutual equipment. All tracks shall have a test, by actual operation, of the pari-mutuel equipment before the opening of each meeting, which shall be approved by a representative of this commission and of the State Tax Commission.

Historical Note

Sec. added by renum. 102.34, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.35 Display of public information. Each track licensee shall cause to be erected a sign or board upon which shall be displayed the approximate straight odds on each horse in any race; the total amount wagered upon each horse in each pool; the value of a two dollar winning mutuel ticket, straight, place or show on the first three horses in any race; the elapsed time of the race; the value of a two dollar winning daily double or twin double ticket, if a daily double or twin double be conducted, and any other information that the State Harness Racing Commission may deem necessary for the guidance of the general public. All machines and equipment used for pari-mutuel betting or for the display of the foregoing information must be approved by the State Harness Racing Commission and the State Tax Commission before being used, but neither commission shall require the installation of any particular make of mechanical or electrical equipment.

Historical Note

Sec. added by renum. 102.35, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.36 Personnel. A list of the personnel of the pari-mutuel department shall be submitted to the State Harness Racing Commission for its approval. Such list shall indicate the residence of each employee and also state whether he has been a citizen of the United States of America and a resident of the State of New York for the two years immediately prior to the commencement of his employment. A copy of the pari-mutuel department payroll shall be submitted each week to the State Harness Racing Commission and such payroll shall be accompanied by a statement sworn to by the manager of the pari-mutuel department or an official of the licensed harness racing association stating that at least 85 percent of such employees each day have been citizens of the United States of America and residents of the State of New York for at least two years immediately prior to the commencement of their employment.

Historical Note

Sec. added by renum. 102.36, Title 19,
filed Sept. 6, 1974 eff. Sept. 6, 1974.

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4122.37 Daily reports. All licensed harness racing associations conducting pari-mutuel racing shall submit to the commission within 24 hours after a scheduled day's racing, a complete set of such pari-mutuel forms and data as have been used in the calculations and totals of pari-mutuel wagering.

Historical Note

Sec. added by renum. 102.37, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.38 [Reserved]

4122.39 Exacta. (a) The exacta is a form of pari-mutuel wagering. Each bettor selects, in order the first and second place finisher in the designated "exacta" race. The exacta pool shall be held entirely separate from all other pools and is in no way a part of the daily double, twin double, or straight, place or show pools.

(b) Exacta tickets shall be sold in not less than two dollar denominations and only from two-number issuing machines.

(c) Races in which exacta pools shall be conducted shall be approved by the commission and shall be clearly designated in the racing program.

(d) The design of exacta tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(e) *Scratch.* If a horse is scratched or declared a non-starter no further tickets may be issued designating such horse and all tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(f) *Failure to select a winning combination.* If no exacta ticket is sold combining the winner and second place horse in order the net pool shall be distributed to holders of exacta tickets designating the winner to win. In the event one horse only finishes and is declared winner, the net pool shall be distributed to holders of exacta tickets designating the winner to win.

(g) *Dead heat.* (1) In the event of a dead heat for win the net pool shall be distributed to each combination of winners separately as in a win pool dead heat.

(2) In the event of a dead heat for second the pool shall be divided as in a win pool dead heat among exacta tickets combining the winner with each second place horse.

(h) Coupled entries and fields are prohibited in exacta races.

(k) This rule shall be prominently displayed throughout the betting area of each track conducting the exacta and printed copies of this rule shall be distributed to patrons upon request by the track.

Historical Note

Sec. added by renum. 102.39, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.40 Superfecta. (a) The superfecta (or other approved name) is a form of pari-mutuel wagering. Each bettor selects, in order, the first, second, third and fourth placed horses in the designated superfecta race. The superfecta pool shall be held entirely separate from all other pools, and is no part of a daily double, exacta, or other wagering pool.

(b) Superfecta tickets shall be sold in not less than two dollar denominations and only from machines capable of issuing four numbers.

(c) Races in which superfecta pools shall be conducted shall be approved by the commission and shall be clearly designated in the program.

(d) The design of superfecta tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

SUBTITLE T RACING AND WAGERING BOARD

§ 4122.41

(e) *Scratch.* If a horse is scratched or declared a nonstarter no further superfecta tickets may be issued designating such horse and all superfecta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(f) *Failure to select a winning combination, short finishes.*

(1) If there is a failure to select, in order, the first four horses, pay-off shall be made on superfecta tickets selecting the first three horses, in order; failure to select the first three horses, pay-off to superfecta tickets selecting the first two horses, in order; failure to select the first two horses, pay-off to superfecta tickets selecting the winner to win; failure to select the winner to win shall cause a refund of all superfecta tickets.

(2) If less than four horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

(g) *Dead heats.* In the event of a dead heat or dead heats, all superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets, and distribution shall be made in accordance with established pari-mutuel practice relative to dead heats.

(h) Coupled entries and fields are prohibited in superfecta races.

(i) This rule shall be prominently displayed throughout the betting area of each track conducting the superfecta and printed copies of this rule shall be distributed by the track to patrons upon request.

Historical Note

Sec. added by rnum. 10240, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.41 Triple. (a) The triple (or other approved name) is a form of pari-mutuel wagering. Each bettor selects, in order, the first, second, and third placed horses in the designated triple race. The triple pool shall be held entirely separate from all other pools, and is no part of a daily double, exacta or other wagering pool.

(b) Triple tickets shall be sold in not less than two dollars denominations and only from machines capable of issuing three numbers.

(c) Races in which triple pools shall be conducted shall be approved by the commission and shall be clearly designated in the program.

(d) The design of triple tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(e) *Scratch.* If a horse is scratched or declared a nonstarter no further triple tickets may be issued designating such horse and all triple tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(f) *Failure to select a winning combination, short finishes.*

(1) If there is a failure to select, in order the first three horses, pay-off shall be made on triple tickets selecting the first two horses, in order; failure to select the first two horses, pay-off to triple tickets selecting the winner to win; failure to select the winner to win shall cause a refund of all triple tickets.

(2) If less than three horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

(g) *Dead heats.* In the event of a dead heat or dead heats, all triple tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets, and distribution shall be made in accordance with established pari-mutuel practice relative to dead heats.

(h) Coupled entries and fields are prohibited in triple races.

§ 4122.42

TITLE 9 EXECUTIVE

(i) This rule shall be prominently displayed throughout the betting area of each track conducting the triple and printed copies of this rule shall be distributed by the track to patrons upon request.

Historical Note

Sec. added by renum. 102.41, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

4122.42 Quinella. (a) The quinella is a form of pari-mutuel wagering. Each bettor selects two horses to place first and second in the designated quinella race, the order of placing of the said two horses being immaterial. The quinella is not a parlay and this pool shall be held entirely separate from all other pools, and is in no way a part of the daily double, exacta, triple, superfecta, straight, place or show pools.

(b) Quinella tickets shall be sold in not less than two-dollar denominations, and only from two-number issuing machines.

(c) Races in which quinella pools are to be conducted shall be approved by the commission and shall be clearly designated in the racing program. Coupled entries and fields are prohibited in quinella races.

(d) The design of quinella tickets shall be clearly and immediately distinguishable from other pari-mutuel tickets.

(e) *Scratch.* If a horse is scratched or declared a non-starter no further tickets may be issued designating such horse and all tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

(f) *Failure to select a winning combination.* If no ticket is sold on a winning combination in a quinella pool, the net pool shall be apportioned among those holding tickets designating the horse placing first with any other horse and those holding tickets designating the horse placing second with any other horse, in the same manner in which a place pool is calculated.

(g) *Dead heat.* In case of a dead heat between two horses for the first place, that combination shall be the winner of the quinella pool. In cases of a dead heat for first place involving more than two horses, the net pool shall be calculated and distributed to holders of tickets combining any two dead-heated horses as in a win pool dead heat.

(h) In case of a dead heat between two horses for second place, the pool shall be figured as a "place pool", the holders of tickets combining the winning horse and one of the two horses placing second participating in the pay-off.

(i) In case of a dead heat for second place and no tickets is [sic] sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination.

(j) If no tickets combine the winning horse with either of the place horses in the dead heat the pool shall be apportioned among those holding tickets designating the first place horse and any other horse, and those holding tickets designating a second place horse with any other horse, as in a place pool in which a dead heat for place occurs.

(k) If no ticket is sold that would require distribution of a quinella pool to a winner as above defined, the track shall make a complete and full refund of the quinella pool.

(l) This rule shall be prominently displayed throughout the betting area of each track conducting the quinella and printed copies of this rule shall be distributed by the track to patrons upon request.

Historical Note

Sec. added by renum. 102.42, Title 19,
filed Sept. 5, 1974 eff. Sept. 5, 1974.

SUBTITLE T RACING AND WAGERING BOARD

§ 4122.43

4122.43 Shortages. A track may deduct from the wages of a pari-mutuel employee monies owed as a result of such employee's going short on any particular racing day.

Historical Note

See. filed June 8, 1975 eff. June 8, 1975.

2106.1 EM 6-30-75

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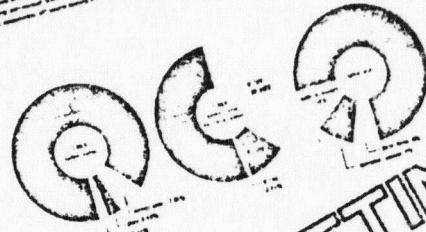
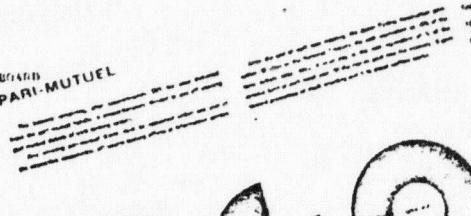
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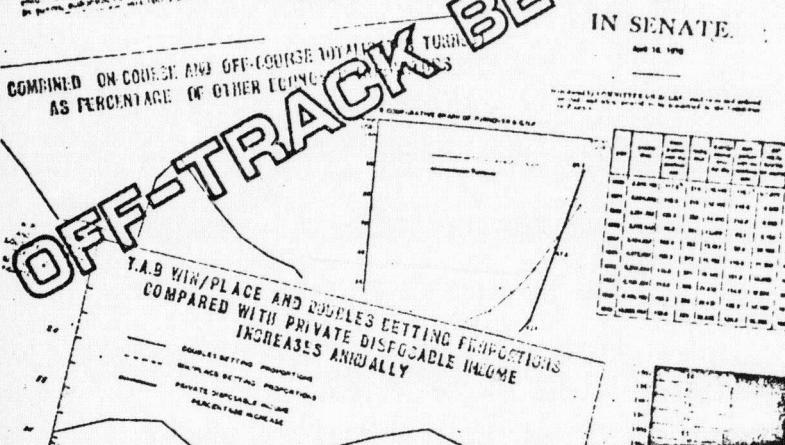
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COMPARED WITH PRIVATE DISPOSABLE INCOME
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IN FRANCE

Efficient and enlightened system provides for richest purses in the world, 10 per cent breeders' awards, funds for subsidy of smaller tracks, funds for equine research and for improving and maintaining training centers.

By Kent Hollingsworth

BECAUSE of the way off-track betting is handled in France, Paris racing offers the richest purses in the world.

In 1969, the 1,265 flat races in Paris averaged \$10,468 in purses. At Longchamp last year, on the day Sassafras beat Nijinsky II in the Prix de l'Arc de Triomphe, the six races on the program averaged \$95,022 in purses.

By comparison, the most affluent meetings in America are conducted by Hollywood Park, whose 675 races in 1969 averaged \$9,791 in purses; the New York Racing Association, whose 2,088 races averaged \$9,635 in purses, and Santa Anita, whose 639 races averaged \$8,492 in purses.

In Australia, Flemington's 131 races including the Melbourne Cup, bolstered by off-track betting, averaged \$6,561 in American dollars in purses. In Japan, 3,006 national races with off-track betting averaged \$5,126 in purses.

The Paris purse average of \$10,468, actually only some \$800 higher than the NYRA average, is considerably higher in relative value; training costs in Paris are \$9 a day, compared to about \$25 a day in New York.

Because of the way off-track betting is handled in France, breeders receive a sum equal to 10 per cent of the purse money earned by horses they breed in France; breeders' awards extend even to earnings of French-bred horses in races outside France.

Compensation to breeders from racing was a concept incorporated in the original French pari-mutuel betting law of 1891. One per cent of the on-course pari-mutuel handle in the provinces, 1½ per cent of on-course handle at the Parisian-operated tracks, and 1½ per cent of all off-course handle (85.67 per cent of the total handle) goes to breeders.

There is a thought in France that breeder awards tend to keep down yearling prices. By assuring a breeder that he will

receive a sum equal to 10 per cent of a horse's earnings after the horse's sale, the thought is that the consignor will place a lower reserve price on his yearling than he would if the sale price were to represent his final return on the yearling. The thought is reasonable, but does not work. French consignors' reserves are so high that only about 63 per cent of the yearlings offered at Deauville are sold.

Part of the pari-mutuel levy for breeders pays the expenses of the French National Stud. Forty per cent of the remainder is devoted to non-race horses—pleasure and work horses; the balance is paid into the Common Fund.

The Common Fund, also supported by contributions from the Parisian tracks, pays the breeders' awards for Thoroughbred racing, steeplechasing, and harness racing; the Common Fund also subsidizes provincial racing, providing 82 per cent of the provincial purse money and some track expenses; the Common Fund also lends money, for 10 and 20 years, to provincial clubs for capital improvements.

The Common Fund is administered by a committee of seven members, three representing the government, two representing the Parisian tracks, and two representing the provincial tracks.

Because of the way off-track betting is handled in France, money is available for construction of major tracks near Paris, such as Longchamp and the new track planned for Ivry, and for maintaining and enlarging training grounds.

Horses racing at Parisian tracks are stabled and trained at Maisons-Laffitte, operated by the Societe Sportive, and at Chantilly, operated by the Societe d'Encouragement. About 2,500 horses are trained at Maisons-Laffitte, where further expansion of the training facilities is restricted by the surrounding town. About 3,000 horses are trained at Chantilly and for the last few

years the Societe d'Encouragement has been buying and leasing additional land and forests around Chantilly and constructing two new training tracks; the horse population in France is increasing, as it is in all countries, and the new facilities are expected to accommodate another 500-1,000 horses.

We never have been to Newmarket, which is half the size of the Chantilly training grounds, so it is an easy thing to declare Chantilly as the finest place in the world to train a race horse. Trainers own their own homes and adjoining stable yards located in the village of Chantilly and around the training grounds; they pay a nominal fee for use of the training grounds, only a fraction of the cost to the Societe d'Encouragement to maintain the center.

Because of the way off-track betting is handled in France, money is available for equine research, for dormitories and training programs for grooms and exercise boys, and for pension plans.

In conjunction with the Grayson Foundation, the Societe d'Encouragement sponsored an international symposium on equine diseases in Paris two years ago, bringing together scientists from all over the world to deliver papers and exchange information on research that, but for such a symposium, would have been severely restricted by language barriers. Another such symposium sponsored by Grayson and the Societe d'Encouragement is planned for July of 1972 to be held in Morocco.

Research on the effect of medications on race horses is continuing under the sponsorship of the Societe d'Encouragement. In France, all medication is prohibited for racing purposes, and constant research is conducted to refine and develop new chemical-detection techniques and procedures.

In America, of course, the only really prohibited medications are those which the chemists can detect, which sometimes proves embarrassing when a horse is shipped into a state served by a testing laboratory that is more thorough than the lab serving the state where the horse had been racing. Some states now are permitting medications the chemists can detect, on the grounds that about half the horses in training are sore and in need of medication to get to the post to fill races. This may be so, but the average field for a race under the haphazard American medication rules and detection procedures numbers 8.19 horses; the average field for a race in France, where horses race only on water, hay, and oats, numbers 11.65 Thoroughbreds, 14.36 Standardbreds.

The reason we have absolutely no objective (that is, any other than that supplied by the makers and sellers of the drug) research on the effect of medication on race horses, the reason we have little or no research on drug detection in race horses, the reason some states have hypocritical rules prohibiting medications their chemists cannot detect is because American racing cannot afford the necessary research.

Because of the way off-track betting is handled, French racing does have the money and does conduct the necessary research. French chemists who belong to the Association of Official Racing Chemists say they are far ahead of American chemists in drug detection.

All post-race saliva and urine tests in France are conducted simultaneously by two chemists, one paid by the track and one paid by the trainers' association. This has a tendency to take some of the art out of drug detection and move it closer to an exact science.

At any rate, because of the way off-track betting is handled in France, revenue therefrom is channeled back into racing and provides:

- 1) Paris racing with the richest purses in the world;
- 2) French breeders with a sum equal to 10 per cent of the earnings of horses they breed;

- 3) Money to maintain, refurbish, rebuild race tracks;
- 4) Money to subsidize purses and tracks in the less populous provinces;
- 5) Money to maintain and improve training centers and to pay vanning fees from training centers to the tracks;
- 6) Money to support equine research;
- 7) Money to maintain a school and living quarters for apprentice stable help, to build a hospital in Chantilly, to finance a stable-help pension plan supplementing that already financed by trainers (much of this money comes from un-redeemed pari-mutuel tickets, money which in America escheats to the state).

So how is this handled?

Racing in France is regulated, controlled and conducted by 357 private, non-profit racing societies whose rules, dates, and accounts are subject to approval by the Ministry of Agriculture.

All racing societies belong to the Federation Nationale, which is a combination of our National Association of State Racing Commissioners and the Thoroughbred Racing Associations. The 352 provincial societies (297 of which conduct short meetings of one to four days) are divided into 10 regional federations, each region setting up its own calendar of racing dates and maintaining a pool of racing officials.

The Federation Nationale is managed by a board consisting of 10 representatives of provincial tracks (one from each region) and the five chairmen of the Parisian societies. Chairman of the board is Marcel Boussac and general manager is Jean Romanet, who hold the same positions with the Societe d'Encouragement. The Federation Nationale meets annually, sets the racing calendar for all of France, and settles upon the amount of money to be contributed by the Parisian societies to subsidize provincial racing.

French racing is dominated by the five Parisian societies on whose race meetings 92 per cent of France's total handle (\$1,231,912,422 in 1969) is wagered:

Societe d'Encouragement pour l'Amelioration des Races de Chevaux en France, founded in 1833, promulgates and administers rules for all Thoroughbred racing, and conducts racing at Longchamp, Chantilly, and Deauville;

Societe des Steeple-Chases de France, founded in 1863, promulgates and administers rules for all steeplechasing and hunt meetings, and conducts steeplechasing at Auteuil;

Societe du Cheval Francais, founded in 1864, promulgates and administers rules for all harness racing, and conducts harness racing at Vincennes;

Societe Sportive d'Encouragement conducts Thoroughbred racing at Saint-Cloud and Maisons-Laffitte, steeplechasing and harness racing at Enghien; Societe de Sport de France, which specializes in races for amateurs and apprentices, conducts racing (until its new track is completed at Ivry) at Longchamp, Chantilly, Maisons-Laffitte, and Vichy.

The oldest and most important of the parent rule-making societies is the Societe d'Encouragement. Lord Henry Seymour, a rich, young Englishman enjoying Paris under the rule of Louis Philippe, more or less started organized racing in France in 1833 when he founded the French Jockey Club. The organization was patterned after the English Jockey Club, founded about 80 years earlier, but it was soon found that the majority of members were more concerned with playing cards than horses; those interested in conducting races along the English pattern soon separated, forming the Societe d'Encouragement, leaving the French Jockey Club holding the cards and the reputation as the most exclusive social club in the world, but with no control over racing. (Registration of Thoroughbreds is handled by the Ministry of Agriculture.)

Seymour had a sense of humor that cost him friends, ranging from giving exploding cigars to leaving nothing to his

(Continued on next page)

OFF-TRACK BETTING

(Continued from page 747)

servants so they would regret his death. Be that as it may, during his presidency organized racing in Paris was begun--where the Eiffel Tower now stands--and was supplemented by a new course at Chantilly, where the French Derby was inaugurated in 1836. Seymour won the French Derby four times, in 1811 with Poetess, she by a stallion Seymour imported from England, Royal Oak (for which the French St. Leger was named); Poetess became the first great French broodmare, producing Oaks winner Hervine and Derby winner Monarque.

In 1865, Joseph Oller developed the pari-mutuel method of wagering in France. (From *pari*, meaning to bet; and *mutuel*, mutual. When the system was introduced at Churchill Downs in 1878, it was called "the Paris Mutuels.") The first pools were simple lotteries, but by 1869 Oller instituted the method whereby a player could pick the horse he wanted. In 1891, bookmakers were ruled off Paris tracks by a law prohibiting all betting on horses other than by the pari-mutuel method. The bookmakers just moved downtown. A 1930 law, designed to run the bookmakers out of town, gave the tracks permission to extend pari-mutuel betting to off-track facilities.

Over the last 40 years the French have avoided or solved every problem concerning off-track betting, real or imagined, of which Howard Samuels complains as having prevented his getting the game going in New York. Strangely, the New York City Off-Track Betting Corporation has yet to invite a Frenchman over to consult on or help solve the New York problems.

The French have a different system of organization from that designed for New York. Off-track betting in France is operated—not by a corporation in competition with the tracks and under a state-appointed off-track pari-mutuel betting commission with legislative standing equal to that of the racing commission—but by something called the Pari Mutuel Urbain.

The PMU has no legal status. It is neither a private corporation nor a government agency. It is a pari-mutuel service common to and controlled by the five Parisian racing societies. It conducts off-course and on-course pari-mutuel wagering for Thoroughbred racing, steeplechasing, and harness racing.

In France, 92 per cent of all pari-mutuel wagering is on races conducted by the Parisian societies, and most of this (89.7 per cent) is wagered off-track. Provincial racing accounts for only eight per cent of the total handle in France, and most of this (62.3 per cent) is wagered on-track. Minor racing in the provinces does not command the attention of players throughout France as does Parisian racing.

Combining all wagering in the provinces and in Paris, 85.67 per cent is bet off-track. Nearly all the off-track betting is on gimmick bets—the Tierce, Couple, Report, on combinations of horses which produce a large payoff on a small investment—whose pools are not combined with on-track pools. The minimum off-track bets also are lower than the minimum on-track bets; the minimum off-track Couple is two francs (36 cents), the Tierce three francs, while the on-track minimum is five francs.

The only off-track bets combined with on-track pools are the traditional win and place bets, called Simples. Off-track bettors playing Simples in the morning have no indication of the final pay-off odds; those who bet the Simples in the afternoon at the 21 betting shops (six in Paris, 15 in the provinces) operated by the PMU are given "probable" on-track odds. The Simples account for only 13.8 per cent of the off-track handle; the real action, the play which produces the revenue that enriches French racing, is on gimmick bets.

Off-track betting in France was insignificant when it was started 40 years ago, offering only win and "place" (comparable to our show) betting. It was bolstered by the Couple (the win Couple requires picking the first two horses, regardless of their

order of finish; the place Couple requires that the two horses picked finish among the first three). In 1954, Andre Carrus of the PMU developed the Tierce (the Tierce pool is divided so that players who pick the first three horses in the correct order of finish receive an "exact order" dividend which is five times the "basic" dividend returned to players who pick the same three horses, but in the five other possible orders of finish).

Introduction of the Tierce and its nationwide popularity made French racing the rich game it is today. In 1969, the Tierce was conducted on 75 Sundays and holidays and more than \$11 million dollars was bet on this gimmick. This sum amounts to 61 per cent of all off-track betting, 52 per cent of the entire handle in France, and it is bet off-track on only 75 races.

(As noted above, the off-track gimmick pools are not combined with on-track pools. Players at the track, however, are offered the same types of gimmick bets; the on-track Couple is called the Juniele, while the on-track Tierce is called the Triplet for picking the first three in exact order of finish. Triple for picking the first three regardless of order.)

The tracks and days for the Tierce are designated annually by the Parisian societies, long in advance of the race. Specific races for the Tierce are recommended by the PMU directors for the Parisian societies' approval a few days before the race.

Usually the classic races and major stakes are selected for the Tierce, but if the field is small or if two or three horses are standouts and the remainder of the field is thought to have no chance, another race on the day's program will be selected for the Tierce.

The best races for the Tierce are high-class handicap races. Classics and weight-for-age stakes provide only about a dozen Tierce events, for as the season progresses the relative merits of the top horses become fairly well established, lessening the betting attractiveness of these races. Handicap races, however, are designed to give all entrants as even a chance to win as can be managed by shifting weight assignments; high-class handicap horses in Paris are well known throughout France, as are jockeys and trainers, such recognition being counted an important factor in generating Tierce betting.

Although fields can number as many as 30 horses, the ideal number for a Tierce is thought to be 18, not more than 25, not less than 13. Since the introduction of the starting gate in France, the distance of a race no longer is considered important for the Tierce, the gate providing all horses with a fairly equal chance at the start; before the gate, it was thought a long race was necessary to negate the inequalities of a straggling start.

In France, the cost of operating pari-mutuels—at least when expressed as a ratio or percentage of handle—is higher on-course (4.45 per cent of the on-course handle) than off-course (3.33 per cent of the off-course handle). Sellers and cashiers for Parisian tracks are paid high salaries to account in part for travel expenses; racing shifts every day, seven days a week, from tracks located at either end of Paris, up to Chantilly, and for 17 days in August to Deauville (France's Saratoga).

Cost of operating pari-mutuels on-course at American tracks ranges from 1.25 per cent to 2.25 per cent of the handle; cost of operating pari-mutuels off-course here is unknown, of course, because it never has been done. Further, there can be no knowledgeable forecast of possible off-course handle in New York or any other state. Costs involving labor unions and computers are inestimable, other than a generalized "high."

In Australia, cost of operating pari-mutuels off-course ranges from a low of 4.9 per cent of the off-course handle in New South Wales to a high of 9.3 per cent in the Australian Capital Territory. In New Zealand, the cost of operating pari-mutuels off-course rose from 5.39 per cent in 1955 to 6.24 per cent of the handle in 1969.

Thus the PMU cost of 3.33 per cent of the off-course handle

BEST COPY AVAILABLE

in France appears to be efficient. It also makes off-track betting worthwhile for the French horse industry, for if the costs were higher, they necessarily would come from revenue presently being returned to racing. In short, the efficiency of the PMU methods makes Sammy run.

In France, off-track betting tickets are handled through some 5,000 sellers already licensed by the state to sell tobacco. Usually, these selling places are cafes. About 2,500 handle weekday betting, with an additional 2,500 handling the heavy Tierce play on Sundays and holidays.

The tobacconists receive one per cent of the money they handle in compensation for use of their shops and personnel. Tobacconists retain the money they receive for tickets, and use it to pay off winning tickets the next day; all tickets must be cashed at the cafe where they were purchased. If a cafe must pay out more than it took in, a compensating sum is sent to it from a central agency; excess money taken in is mailed by the tobacconist to a bank in Paris.

This would seem to require incredible honesty on the part of French tobacconists. The salient problem in Canada, when it was declared lawful for "messengers" to carry money from their shops to the track, was the failure of the "messengers" to take all the money bet in their shops along with them to the track.

Controls developed during 40 years of handling off-track betting in France appear to be adequate. Bettors pay a nominal fee (0.3 cents) for a book of 10 tickets; bettors also pay 13 cents for a small clipping tool—a sum which can be refunded if a bettor swears off—necessary to prepare a ticket.

Each ticket has three parts, the top (control-B), middle (operations-A), and the bottom part (bettor receipt-C). The bettor folds the C and B portions under the A section and writes out his selection of two numbered horses for a Couple, say, indicates the race number, whether he wants a win or place Couple, or both, and the amount of money bet, all of which is transcribed on the other two portions of the folded ticket. Then he clips out notches on the edge of the ticket in designated places confirming what he has written. At this point the ticket is uncancelable, for it has not been validated.

From the time his neighborhood cafe opens at 8 a.m. until shortly before 1 p.m., a bettor can present his ticket for validation and place his wager. The tobacconist's validating machine marks the folded ticket with date, race number, place of sale, serial number of the selling machine, and that machine's special code of the day. Stub C is returned to the bettor.

The two other portions of the ticket, and the daily code, are picked up before 1 o'clock and by taxi, bicycle, motorcycle, or airplane (from tobacconists on Corsica) are taken to one of 43 PMU central offices in major cities throughout France. The A portion of the ticket is severed and immediately sent to a control office in Marseilles, where it is placed under lock and key before the first race is run. There it serves as a check against possible altering of the B portion at the central office of operations.

As the race results come into the central office, women start sorting out winning tickets by punching knitting needles through the proper numbers, the properly notched winning tickets dropping from the stack. Information as to the amount of money represented by all the tickets at each of the 43 central agencies, and the winning tickets, is relayed to one of eight sub-centers in another town, and again is relayed to the main center in Paris, where the payoff is computed and relayed back to the local central offices. There the individual number of each winning ticket and the amount of payoff is written on a sheet that is sent back to each tobacconist and from which he cashes tickets the next morning.

The first fraud that comes to mind is a bettor getting together with a tobacconist and having a blank ticket validated, then filled in after the race. Well, portions A and B never went

to the central office or control office before the first race, for there is not much point in firing two blanks. Here I have the properly marked and clipped Stub C; Mr. PMU, you have lost my two other portions. Ah, but the carbons and inks have been so devised that it can be, and has been, proven in a court of law that a ticket was validated before it was written on. When a man produces a stub on which the central office has not directed payment, the tobacconist pays at his peril or refers the claimant to the central office.

"The man comes to us and says we must have lost the other portions of the ticket," says Pierre Carrus of the PMU. "Of course, it is impossible for us to lose a ticket at operations and they to lose the same one at control, and again, happen to have that precise ticket a winning one, too. This cannot happen. So we know in advance that we can prove the ticket was written out after it had been validated in blank. So we ask the man if he really wants to be paid, or if he wants to go to jail—whatever he prefers."

Well, then, what is to prevent a tobacconist booking on the side, holding some of the action himself as appears to be a problem in Canada? "The payoff is too big, it is dangerous for one man." Few are the men bold enough to hold a 36-cent Couple against the chance of paying out \$2,000, or a 54-cent Tierce that might pay much more. Holding a \$2 show ticket that might pay out 80 cents is an easier thing to do. Then, too, over the last 40 years, the PMU has a general idea of how much money a particular location should handle.

One of the most dangerous security problems intrinsic to the dramatic payoff of huge sums on Tierce betting is the possibility of a single bettor winning so much money he can afford to distribute \$100,000 or so here and there and fix a pre-arranged order of finish for a Tierce race.

To minimize this contingency, a limit of \$10.80 is placed as the maximum wager on a single Tierce combination. Two years ago a single bettor hired about 50 different men to bet the Tierce and collect for him in shops all over France. All winning bets, however, in excess of \$2,000 are paid by check upon identification of the ticket holder. No two checks are made out to the same person.

"For a time we wrote checks to Mr. Smith, Mr. Johnson, and so on, a list of about 50 names, and these names began to repeat. Of course, we became suspicious because very few people bet the maximum amount on one Tierce; they would rather bet the minimum amount on 20 different Tierce combinations for the same investment," Carrus said. "Then we looked at our canceled checks and found that our 50 names had all endorsed over their checks to one man. That time he won about \$800,000. The next time he did it, he was to win \$1,400,000, but we have not paid and the case is in court. We believe we will prove he violated the rule in exceeding the maximum wager."

Every scheme we proposed to beat this manual operation, Carrus greeted like an old acquaintance and told, by example, how the controls and safeguards built into the system detected it. To a green man from Kentucky, the French system seemed adequate from a security point, and relatively inexpensive compared to other off-track betting systems in the world.

The Carrus family, which always has worked in the PMU, is coming up with something better. Andre Carrus introduced the Tierce; his sons, Pierre and Jacques, have been working with computers. Since 1964 they have had a computer system handling on-course betting at the Vincennes trotting track; this still involves the bettor clipping out a ticket before validation. It can handle win, "place," Jumelle, and Triplet bets, and the myriad formulas for combining horses in fields up to 27 horses, all on one ticket, validated at one window.

The younger Carruses are refining this system. They demonstrated with a model of the new system they have designed that can handle any type of bet with the Jumelle and Tierce wheeled every which way—on one horse with the rest of the field or part

(Continued on next page)

OFF-TRACK BETTING

(Continued from page 749)

of the field, or four horses boxed with all or a portion of the field. It can issue one ticket, representing several hundred different bets. Anyone who has stood in line behind a bettor wheeling the double realizes the time saved in having one ticket represent many bets. The Carruses' new computer system has all manner of built-in checks and safeguards, against issuing impossible combinations, against counterfeiting, handling late scratches, dead heats, entries, corrections, continuously computing and posting new odds.

The new computer system is scheduled to be installed at the Parisian tracks for on-course betting at the end of this year, refined again and installed for off-course betting throughout France within two years.

Will the new computer system be cheaper? "Nothing new is cheaper," observed Jean Romanet. The system will handle more gimmick bets, with more varying formulas or combinations of horses, quicker, and it is thought it will help increase the total handle.

G. The French system of off-track betting appears to be the best of the many operating in the world today. It is in trouble, however.

Two weeks ago, the French government decided to raise its

share of the take by another .43 per cent of the handle. The tax on pari-mutuel wagering in France already is too high. In 1969, the tax amounted to \$203,878,912, or 16.96 per cent of the total handle.

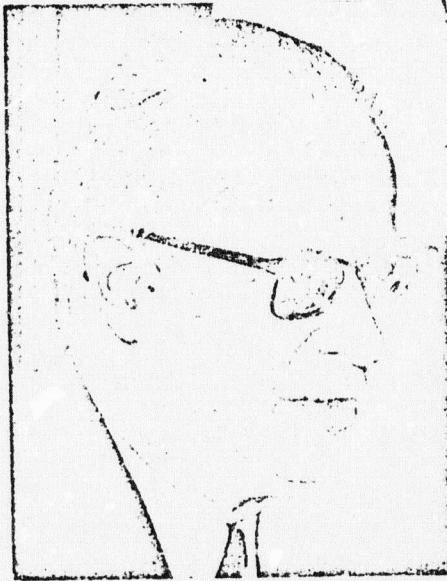
The tax and takeout varies on every betting pool, from 7.56 per cent on Simple bets, 11.17 per cent on Couples, to 19.67 per cent on the Tierce. The government's thought is that a higher tax can be tolerated on the gimmick bets because payoffs to the relatively few winners remain enormous, and the losing bettors could not care less whether their money is lost to the government or lost to other players.

The Stanford Research Study published three years ago in America suggested that few players here are cognizant of the amount of takeout from mutuel pools. Possibly this is true, but the hard mathematical fact is, the more money taken out of the pool, the less money there is available for bettors to re-invest in the pool.

The takeout on big Tierce wagering, which is designed on a progressive scale, has amounted in some instances to 32 per cent.

"The bettors may not feel this in their minds, but they do in their pockets," said Romanet. Total betting, total purse money, and average earnings per starter have declined for the last two years in France.

American lawmakers can learn many things from the French way of handling off-track betting—good things and bad. ◇



OLDEST and most important of the French racing societies is the Societe d'Encouragement, which since 1833 has conducted the best of French Thoroughbred racing, which promulgates the rules for all Thoroughbred racing, issues licenses, and dominates or controls the Federation Nationale of all French tracks, which fixes the French racing dates and purse distribution, and the Pari Mutuel Urbain, which operates all pari-mutuel wagering in France.

Chairman of the 36-member Societe d'Encouragement, as well as chairman of the Federation Nationale, is 82-year-old Marcel Boussac, who made millions in the textile industry and considerably more on the cut of those textiles as owner of Christian Dior. Boussac won his first classic race in 1922 when Ramus took the French Derby. Many more were to come as he topped France's owners' list 19 times, winning the French Derby (just to take one classic) with Tourbillon in 1931, Thor in 1933, Cillas in 1938, Pharis in 1939, Ardan in 1941, Coaraze in 1945, Sanjar in 1947, Scratch in 1950, Auriblan in 1952, and Philus in 1956. The Boussac breeding dynasty was built on three leading sires—Tourbillon, Asterus, and Pharis—whose influence has diminished in recent years. In winning the 1969

Jean Romanet — A Man For All Racing Seasons

French Oaks, Crepellana became the first Boussac classic winner since 1956. Lessening of success on the Turf was concomitant with Boussac's assuming the chairmanship of the Societe d'Encouragement in 1960; it was just as well, for it would be awkward for a man to be head of the track, fix the dates and amount of purse money, rule on racing disputes, and win all the races, too.

Boussac brought with him to the Societe d'Encouragement, as director general, Jean Romanet, something of a Marshall Cassidy, Jimmy Kiltroe, Everett Clay, and George Smathers rolled into one. Romanet, at 56, generally is recognized as the most capable racing administrator in the world today.

Actually, Romanet has been associated with the Societe d'Encouragement much longer than 10 years. He was born to it and has lived continuously in an apartment over the Societe d'Encouragement's Paris offices since the building was constructed in 1924.

Rene Romanet, Jean's father, was director general of the Societe d'Encouragement, as well as of the Federation Nationale, from 1921 until his death in 1945. Rene Romanet succeeded in the positions his brother, Maurice, who had been with the Societe d'Encouragement since 1907. Rene had been in civil service with the French Treasury and was known as an authority on Turf history. In 1906 he began contributing articles on racing and breeding to *La Vie au Grand Air* and in 1910 became a regular contributor to *Le Jockey* under the pseudonym of "Rene Riondet." In 1918 he resigned as a civil servant and joined the Societe as assistant director general to his brother, who died in 1924. During Rene's 20 years as director general, Longchamp was rebuilt, the electrically operated totalizator was introduced, off-track betting began, and the Pari Mutuel Urbain was

Belmont Park



Secretariat. Triple Crown Winner. 1973

OFFICIAL
PROGRAM
25¢ INCLUDING SALES TAX

C O M P L I M E N T A R Y

Thirteenth Day --- Monday, May 27, 1974

PROGRAM 23 cents, SALES TAX 2 cents; TOTAL 25 cents

How to Ask for
PARI-MUTUEL TICKETS

Please call the NUMBER of the Horse FIRST
then the quantity of tickets desired.

Win Tickets

are redeemable for Horses placed FIRST

Place Tickets

are redeemable for Horses placed
FIRST or SECOND

Show Tickets

are redeemable for Horses placed
FIRST, SECOND or THIRD

DOUBLE ON FIRST AND SECOND RACES

WINDOWS OPEN 11:45 CLOSE 1:20

EXACTAS ON THIRD, FIFTH AND SEVENTH RACES

\$2 — \$5 — \$10 TICKETS

TRIPLE ON 9th RACE

\$2 AND \$12 BOX — TICKETS

**(\$12 Box—Maximum number of \$2 combinations on
the three horses selected.)**

WAGERING ON THE THIRD RACE EXACTA WILL BE CONDUCTED DURING
THE REGULAR BETTING PERIODS OF THE SECOND AND THIRD RACE;
FIFTH RACE EXACTA DURING THE FOURTH AND FIFTH RACE; SEVENTH
RACE EXACTA DURING THE SIXTH AND SEVENTH RACE.
WAGERING ON THE TRIPLE WILL BE CONDUCTED DURING THE REGULAR
BETTING PERIODS OF THE EIGHTH AND NINTH RACE.

**ALL \$2, \$5 and \$10 Exacta tickets will be cashed at all
\$2, \$5 and \$10 Win Cashier Windows.**

**ALL \$2 and \$12 Box -- Triple tickets will be cashed on the
First Floor of the Grandstand and Clubhouse. \$2 tickets
at all \$2 Win Cashier Windows. \$12 Box tickets at all
\$5 and \$10 Win Cashier Windows.**

UNCASHED TICKETS

Previous days tickets will be cashed on the 2nd floor of the Grandstand
at windows 201 thru 208 on the 2nd floor of the Clubhouse at windows
562 thru 564.

WINDOWS WILL BE OPEN FROM 12 NOON TO 3:30 P.M.
Tickets may be sent by registered mail (full value declared) addressed
to MUTUEL DEPARTMENT, P. O. Box 90, Jamaica, N. Y. 11417. Winning
tickets from 1974 must be cashed before April 1, 1975.

NEW YORK STATE
RACING AND WAGERING BOARD

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JOHN S. CLARK
Counsel

Belmont Park is licensed for 1974 by the N. Y. State Racing and Wagering Board and operates under its Rules and Regulations.

NEW YORK STATE TAX COMMISSION

Director of Parimutuel Revenue

ANDREW W. FEENEY

EXACTA BETTING ON 3rd, 5th AND 7th RACES

The Exacta is a wager in which you must pick the two horses which will finish first and second in a race in that exact order. For example, if your selection for the third race was Number 5 to win and Number 3 to finish second, you would go to an Exacta window any time after the start of betting for the second race and ask for 5-3. Only if the order of finish for the third race as officially posted showed No. 5 the winner and No. 3 second would you have a winning exacta.

The exacta is a separate money pool in its selected race as are the win, place and show pools for that race. Exacta tickets may be purchased in \$2, \$5 and \$10 denominations. The windows and the tickets are color-coded for your convenience with the \$2 betting being Yellow, the \$5 Red and \$10 Green.

TRIPLE ON 9th RACE ONLY

Triple tickets are sold in the same locations as Daily Doubles and Exactas on all floor levels.

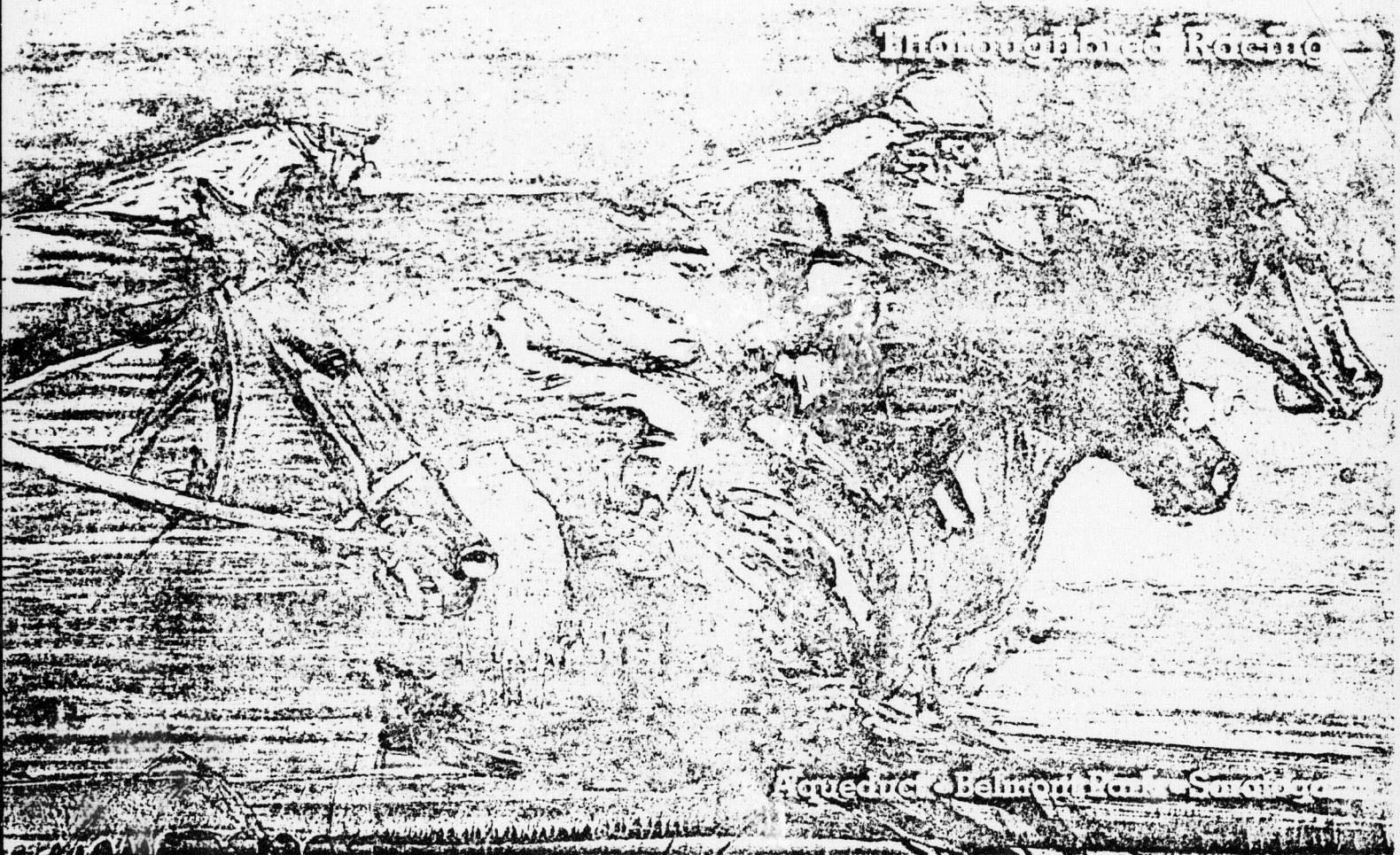
To play the Triple go to any window that has the purple \$2 Triple sign. Tickets are sold in \$2 denominations. Ask for the numbers of the three (3) horses that you think will finish first, second and third. You must call the numbers in the exact order that you think the horses will finish one, two, three.

To buy three horses in the Triple costs \$12. These tickets are sold where the orange \$12 Box Triple signs are above the window.

In Box Triple you must select the numbers of the three (3) horses you think will finish either first, second or third. The Box Triple ticket will give you all 6 possible combinations of those three horses finishing first, second or third. When asking for a \$12 Box Triple ticket you must call the lowest program number first, the next highest number second and the highest number last. If these three horses all finish first, second and third—in any order—it is a winning ticket.

Triple tickets will be cashed on the ground floor of the Clubhouse and Grandstand. The winning purple \$2 Triple ticket may be cashed at all \$2 Win Cashier Windows on the ground floor and the winning orange \$12 Box Triple ticket may be cashed at all \$5 and \$10 Win Cashier Windows.





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Fundamentals of Pari-Mutuel Betting

In addition to backing your choice with enthusiasm, you can place a bet on your horse provided you're over 18 years old. It certainly can heighten your interest in the outcome. Win or lose, when you wager in the pari-mutuel system you are simply betting against other fans. YOU DO NOT BET AGAINST THE ASSOCIATION, BUT ALWAYS AGAINST the other bettors. The Association, in essence, holds all bets and pays off the winners after each race result becomes official. It deducts a commission for providing the races and track accommodations and also deducts a stipulated commission for the State. But all the rest of the money—ALL OF IT—is returned to the winning bettors after each

race. The breakdown goes like this:

| | |
|-----------------------------|---------------|
| Betting Dollar..... | \$1.00 |
| State's Commission..... | .09¢ |
| N.Y.R.A.'s Commission | .08¢ |
| "Breakage" to State..... | .0080¢ |
| "Breakage" to N.Y.R.A.... | .0020¢ |
| Returned to Winning Bettors | .82¢ |
| Total..... | \$1.00 |

There are three basic types of bets:

WIN—You bet that your horse will be FIRST.

PLACE—You bet that your horse will be FIRST or SECOND.

SHOW—You bet that your horse will be FIRST, SECOND or THIRD.

When you bet to "WIN," you collect only if your horse finishes first. And the race result is official. The payoff normally is more for a win bet than a place or show bet.

When you bet to "PLACE," you collect if your horse finishes either first or second AND THE RACE result is official.

When you bet to "SHOW," you collect if your horse finishes first, second or third AND THE RACE RESULT IS OFFICIAL.

In addition to these three basic types of bets, there is the "Across-the-Board Combination." Here you bet the three positions of win, place and show on the same horse in one transaction, and collect the amount for each position in which your horse finished.

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|-------------------|-------|------|------|-----|-----|------|------|------|------|------|-------|-------|------|-------|
| INFORMATION | | | | | | | | | | | | | | |
| RACE 5-2 LBS OVER | | | | | | | | | | | | | | |
| P | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| W | 80 | 762 | 340 | 499 | 540 | 695 | 147 | 814 | 571 | 1092 | 1145 | 1217 | 1001 | 1001 |
| Y | 97026 | 1015 | 745 | 797 | 718 | 1018 | 1528 | 9202 | 5239 | 6545 | 14808 | 13319 | 4585 | 1010 |
| M | 38658 | 1485 | 3528 | 840 | 275 | 793 | 4958 | 4070 | 2731 | 3039 | 5781 | 24730 | 2428 | 1001 |
| A | 26413 | 5849 | 917 | 272 | 554 | 317 | 2301 | 1950 | 2061 | 2332 | 3410 | 2036 | SHOW | 26413 |

Qdss

In pari-mutuel betting the fans set the odds by their betting selections. As a guide the track publishes "a morning line" on each horse in every race to give the fans an indication of what the probable odds might be. It is important that the patron realize the "morning line" is only an educated guess; the real odds are determined by the patrons themselves. Technically, odds are an arithmetical expression of how much is bet to win on each horse against the total amount bet to win on all the horses in a race. For example, "Hudson County's" morning line odds are 4 to 1 (see illustration with "Hudson County" listed as program number 8). Four to one (4 to 1) is a ratio of \$4 against \$1 bet on "Hudson County" for a total of \$5. In terms of percentage this means that there is a probability that 20% ($100 \div 5$) of the total win pool will be bet on "Hudson County". With this in mind, you will see where odds are not related to the number of horses in a race. There could be a race with 6 horses and one horse could be 20 to 1, meaning that only 4.76% ($100 \div 21$) of the total win pool would be bet on the long shot.

The pari-mutuel pay-offs on a winner, after a race is declared official, are based

on the odds established by the on- and off-track fans' betting pattern before the race is run. And, as history shows only too well, the "favorites" are not necessarily the best horses, but only the betting selection of the fans.

There is the "DAILY DOUBLE" on the first two races each day. You pick a horse to win the first race and a horse to win the second race and purchase a single ticket combining both races. Any number of combinations can be bet. Both horses must "WIN" in order to collect. The pay-offs on winning "daily doubles" sometimes are large when two "long shots" win the first and second races. "Daily Doubles" can be bought for \$2 and \$10.

There is "EXACTA" wagering, which is a separate pool, on the 3rd, 5th and 7th races. The Exacta is a wager in which you must pick the two horses which will finish first and second in a race in that order. For example, if your selection for the third race was Number 5 to win and Number 3 to finish second, you would go to an Exacta window any time after the start of betting for the second race and ask for 5-3 in \$2, \$5 or \$10 denominations. Only if the order of finish for the third race as officially posted showed Number 5 the

TRIPLE WINDOWS OPEN FOR 9TH RACE

1 1/8 MILES

EIGHTH RACE

THE BELMONT
(10th RACING)
\$175,000 ADDED

| | | | |
|-----------|------------------|-----|--|
| 1 | LITTLE CURRENT | 126 | M. GILL A.
TREVOR (Part. Pm. 7) |
| 1A | COVERED PORTAGE | 126 | 5-5
MAGGIE A.
ROBERT (Part. Pm. 7) |
| 2 | RUBE THE GREAT | 126 | BEAU-Q
BASIA (Part. Pm. 5) |
| 2B | ACCIPITER | 126 | ANGEL
SANTAGO (Part. Pm. 5) |
| 3 | JOLLY JOHU | 126 | BEN M.
PELICANO (Part. Pm. 5) |
| 4 | BOLD AND FANCY | 126 | VINCE
PACIACILO (Part. Pm. 5) |
| 5 | SHADY CHARACTER | 126 | EDDIE
MILES (Part. Pm. 4) |
| 6 | CANNONADE | 126 | 5-2
JORGE
VILASQUEZ (Part. Pm. 4) |
| 7 | SEA SONGSTER (S) | 126 | BONI-COTTIE
(Part. Pm. 3) |
| 8 | HUDSON COUNTY | 126 | MICHAEL
VENUTO (Part. Pm. 3) |
| 9 | KIN RUN | 126 | MILES
MOSE (Part. Pm. 3) |

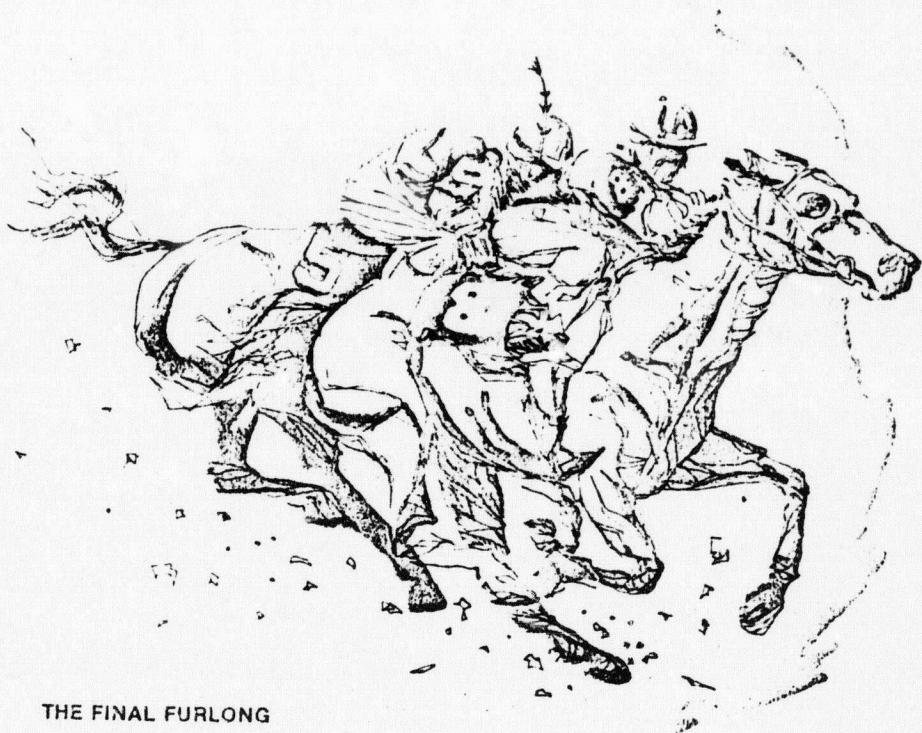
MORNING LINE

winner and Number 3 second would you have a winning Exacta.

The "TRIPLE" is a newly established form of wagering, and a separate pool, and occurs on the 9th race only. To play the Triple ask for the numbers of the three horses you think will finish first, second and third. You must call the numbers in exact order that you think the horses will finish one, two, three.

If by your computations you are sure that three horses will be first, second and third in any order, the track offers a simplified means to incorporate all three numbers into one wager—the "BOX TRIPLE". The Box Triple ticket will give you all six possible combinations of those three horses finishing first, second or third in any order. When asking for a Box Triple ticket costing \$12, you must call the lowest program number first, the next highest number second and the highest number last. If these three horses finish first, second and third—in any order—it is a winning ticket.

The smallest denomination that can be bet is \$2.00. In basic bets, you can also wager \$5, \$10, \$50 and \$100 win, place and/or show. In "Across-the-Board Combination" bets, you can buy \$6 and \$15 tickets.



THE FINAL FURLONG

* THE TRIPLE

3.7 A The Triple is a form of pari-mutuel bet. The object of the Triple is to select in order the first, second and third place horses in the designated triple race. The Triple pool shall be held entirely separate from all other pools and is no part of a daily double, exacta or other wagering pool.

B If a horse is scratched or declared a non-starter, no further Triple tickets may be issued designating such horse and all Triple tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

C In the event of a dead heat or dead heats, all Triple tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets and contrary to the show pool practice the aggregate number of winning tickets shall divide the net pool and be paid the same payoff price.

D Coupled entries and fields are prohibited in Triple pools.

E 1 If there is no bet on a winning combination of a Triple pool, payoff shall be made on Triple ticket holders selecting the first two horses in order; failure to select the first two horses, payoff to Triple ticket holders selecting the winner to win; failure to select the winner to win shall cause a refund to all Triple ticket holders.

E 2 If less than three horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

THE SUPERFECTA

3.8 A The Superfecta is a form of pari-mutuel wagering. Each bettor selects, in order, the first, second, third and fourth placed horses in the designated Superfecta race. The Superfecta pool shall be held entirely separate from all other pools, and is no part of a daily double, exacta, or other wagering pool.

B If a horse is scratched or declared a non-starter no further Superfecta tickets may be issued designating such horse and all Superfecta tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

C In the event of a dead heat or dead heats, all Superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead-heated, shall be winning tickets, and, contrary to the usual practice, the aggregate number of winning tickets shall divide the net pool and be paid the same pay-off price.

D Coupled entries and fields are prohibited in Superfecta pools.

E 1 If there is a failure to select, in order, the first four horses, pay-off shall be made to Superfecta ticket holders selecting the first three horses, in order; failure to select the first three horses, pay-off to Superfecta ticket holders selecting the first two horses, in order; failure to select the first two horses, pay-off to Superfecta ticket holders selecting the winner to win; failure to select the winner to win shall cause a refund to all Superfecta ticket holders.

E 2 If less than four horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

4. BRANCH OFFICE RULES

4.1 The Corporation shall appoint an officer, employee or agent of the Corporation to have management and control of each branch office.

4.2 A notice shall be displayed in a conspicuous location in every branch office setting forth the hours during which said branch shall be open for business.

4.3 In each branch office, there shall be exhibited such track, racing, and betting information as the Corporation shall determine.

4.4 The exhibition of track, racing, and betting information is solely for the convenience of the betting public, and the Corporation assumes no responsibility or liability for the accuracy of such information.

4.5 Notwithstanding any other rule, the person in charge of each branch office may at any time declare the branch office closed for receiving bets on any pari-mutuel pool, race, group of races, or closed for all betting.

4.6 All bets at branch offices shall be made with United States currency. The person in charge of any branch office may at his discretion, refuse to accept one or more forms of such currency.

4.7 The branch office may require that the bettor indicate on a printed betting slip provided or reasonable facsimile thereof in clearly legible handwriting, the race track, amount of the bet, the type of bet, the race number, and the horse and such other information as may be from time to time specified by the Corporation. Such specified information must be in the form and format designated by the Corporation, e.g., in the event the Corporation specifies that horses are to be designated by letters instead of numbers then only such letter designation will constitute a valid horse selection.

4.8 Upon receipt of the money to be wagered and the information set forth in Section 4.7, the branch office shall issue a ticket to the bettor which shall show the information submitted by the bettor. The issuance of such ticket shall constitute acceptance of the bet, subject, however, to Section 4.9 and to said bet containing the information specified by the Corporation.

4.9 Any person making a bet shall be deemed to accept the ticket issued to him, unless a timely application is made to have any error or omission rectified by refund provided that the refund transaction is completed prior to the close of betting.

4.10 Any validly issued ticket may be presented for a refund by the holder thereof. A request for a refund shall be honored if, in the discretion of branch office personnel, the ticket is a valid pari-mutuel ticket of the Corporation and the refund transaction is completed prior to the close of betting for any bet listed on said ticket. A request for a refund shall also be honored in the event that the Corporation has not accepted the bet pursuant to the provisions of Section 4.8.

4.11 Any ticket presented for winnings, refund or for any other purpose, may be rejected without any payment being made thereon if it has been altered, defaced or mutilated. Any alteration to the ticket number or other information thereon identifying the bet renders the ticket void.

4.12 Where a ticket is incomplete, the characters undecipherable, or contains inconsistent data with respect to any

EXHIBIT B

Certificate
Registration of a Claim to Copyright
In a published book manufactured in the United States of America

| | |
|-------------------|------------------|
| CLASS | REGISTRATION NO. |
| A | 555,005 |
| DO NOT WRITE HERE | |

This is to Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereunto affixed.

Abraham L. Bernstein
 ABRAHAM L. BERNSTEIN
 Register of Copyrights
 United States of America

NOT VALID WITHOUT
 CANCELLATION
 OF THIS STAMP

1. Copyright Claimant(s) and Address(es):

Name LUCIO P. SALVUCCI

Address 746 COMMERCIAL ST., Weymouth, Mass.

Name _____

Address _____

2. Title: TRI-3 DOUBLE

(Title of book)

3. Authors:

Name LUCIO P. SALVUCCI

(Legal name followed by pseudonym if latter appears on copies)

Citizenship U.S.A.

(Name of country)

Domiciled in U. S. A. Yes YES No 746 COMMERCIAL ST., Weymouth, Mass.

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____

(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____

(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

4. Date of Publication of This Edition:

March 30, 1962

5. New Matter in This Version:

6. U. S. Edition of Book First Manufactured and Published Abroad: If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

Year date of first publication of foreign edition (Year)

Was claim to ad interim copyright registered in the foreign edition?

Yes No

Yes No

If claim to ad interim copyright was not registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Complete all applicable spaces on next page

EXHIBIT A

q1

7. Deposit accounts

8. Send correspondence to:

Name: LUCIO P. CALVUCCI

Address: 746 COMMERCIAL ST., WACOMONI, MASS.

9. Send certificate to:

(Type or
print
name and
address)
Name:
Address:

LUCIO P. CALVUCCI

746 COMMERCIAL ST.

(Number and street)

WACOMONI

80

(Zone)

MASS.

(State)

Information concerning copyright in books

When To Use Form A. Form A is appropriate for published books which have been manufactured in the United States.

What Is a "Book"? The term "books" covers not only material published in book form, but also pamphlets, leaflets, cards, and single pages containing text. Books include fiction, nonfiction, poetry, collections, directories, catalogs, and information in tabular form.

Unpublished Books. The law does not provide for registration of "book" material in unpublished form. Unpublished books are protected at common law against unauthorized use prior to publication.

Duration of Copyright. Statutory copyright in published books lasts for 28 years from the date of first publication, and may be renewed for a second 28-year term.

How to secure statutory copyright in a book

First: Produce Copies With Copyright Notice. Produce the work in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

Second: Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as "... the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

Third: Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Congress, Washington 25, D. C., two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$4.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr." or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1958. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

NOTE: It is the act of publication with notice that actually secures copyright protection. If copies are published without the required notice, the right to secure copyright is lost, and cannot be restored.

Books manufactured abroad

In General. Form A is not appropriate for books which have been manufactured outside the United States.

Foreign-Language Books. Applications covering foreign-language books by foreign authors, manufactured abroad, should be submitted on Form A-B Foreign.

English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full-term registration on Form A-II Foreign.

(1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has

been secured under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within six months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English language work by a foreign author first published abroad is eligible for full-term U. S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country, and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

| | |
|------------------------------------|--|
| FOR CC RIGHT OFFICE USE ONLY | |
| Application and affidavit received | |
| APR -2 1962 | |
| No copies received | |
| APR -2 1962 | |
| Fees received | |
| 125169 APR-2 62 | |

Page 4

TRI-3 DOUBLE

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1 2 and 3 in 2 races on horses or dogs.

The object of this TRI-3 DOUBLE is to select correctly the chosen finish positions in both races of the play or wager.

Winning tickets with the correct first three chosen positions (first half of the TRI-3 DOUBLE) must be exchanged for your selections on the second half of the TRI-3 DOUBLE.

The person(s) getting the most consecutive correct finish positions starting with their first chosen finish position on the first half of the TRI-3 DOUBLE ticket will be the winner.

COPYRIGHT LUCIO P. SALVUGGI, 1962

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - x

| | | |
|---|---|--------------|
| LUCIO P. SALVUCCI, | : | |
| Plaintiff, | : | |
| -against- | : | |
| THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
AND JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION, | : | 75 Civ. 1236 |
| Defendants. | : | |
| | : | |

- - - - - x

MEMORANDUM IN SUPPORT OF MOTION
OF DEFENDANT THE NEW YORK RACING
ASSOCIATION INC. FOR SUMMARY JUDG-
MENT DISMISSING THE COMPLAINT

This memorandum is respectfully submitted in support of the motion by defendant The New York Racing Association Inc. (hereinafter "NYRA") for summary judgment dismissing the complaint for failure to state a claim upon which relief can be granted.

PRELIMINARY STATEMENT

This is an action purportedly brought under the Copyright Act, 17 U.S.C. § 1 et seq., with jurisdiction

predicated upon 28 U.S.C. § 1338(a) (1970). Simply stated, plaintiff's contention is that he holds a copyright to the "idea" of a simple parimutuel wager in which the winning bettor must select, in sequential order, the first three finishers in a single race or in each of two races and that defendant NYRA has "infringed" upon that idea by conducting a similar form of wager at its racetracks. As will be demonstrated below, it has long been settled law that plaintiff's "idea", as distinguished from the words used to describe such an idea, is not subject to copyright under the Copyright Act and that the complaint must be dismissed. Indeed, just last week, the United States District Court for the District of New Hampshire dismissed the complaints in two similar actions brought by the plaintiff in that Court on precisely this ground. A copy of the Court's Opinion is attached as Exhibit A to this memorandum.

Further, it will be shown that even if plaintiff's complaint is read to allege that NYRA copied his words, summary judgment must be granted to NYRA because no such copying was ever done by NYRA. (Point II, infra). Finally, it will be shown that plaintiff's unfair competition claim, if he is in fact making one, must be dismissed. (Point III, infra).

The Parties

Plaintiff Lucio P. Salvucci is alleged to be a resident of the State of Massachusetts.

Defendant NYRA is a private, non-profit racing association incorporated pursuant to Section 7902 of Title 21 of the Unconsolidated Laws of the State of New York (McKinney Supp. 1961), and owns and operates thoroughbred racing tracks at Aqueduct, Belmont Park, and Saratoga, New York.

Defendant Roosevelt Raceway, Inc. is a for-profit harness racing corporation, with a harness track located at Roosevelt, Long Island, and is incorporated pursuant to Section 8003 of the Unconsolidated Laws.

Defendant New York City Off-Track Betting Corporation is a public-benefit corporation created by Section 8081 et seq. of the Unconsolidated Laws (McKinney Supp. 1975), and operates off-track betting facilities within the City of New York.

Defendant Joseph Gimma is sued in the capacity of Chairman of the New York State Racing Commission, the State agency which formerly supervised thoroughbred racing in New York, and whose functions and powers were assumed in 1973 by

the New York State Racing and Wagering Board (hereinafter "the Board"), pursuant to Section 8161 et seq. of the Unconsolidated Laws (McKinney Supp. 1975). The Board also assumed supervision of harness racing and administers off-track betting corporations organized within the State. The original Racing Commission has been retained as a purely advisory body. (Unconsolidated Laws § 8164).

The Complaint

The complaint is composed of four "counts", each of which is directed against a different defendant.

Count One, directed against defendant NYRA, alleges that prior to March 30, 1962 plaintiff "put into words a creative expression of exotic wagering on horses or dogs entitled Tri-3 and Tri-3 Double" (Complaint, ¶ 4), and that on April 2, 1962 plaintiff obtained Certificates of Registration to a Claim of Copyright on them (¶ 6) (these certificates are attached as Exhibit A to the Complaint). Attached to each certificate is a single sheet of paper, one entitled "Tri-3" and the other "Tri-3 Double." These are works of extreme brevity. For example, the entire text of the work entitled "Tri-3" consists of but three sentences:

"TRI-3

"TRI-3 is a 3 finish position play or wager on horses or dogs. The object is to select correctly all finish positions starting with your first chosen finish position of your TRI-3 ticket. If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their first chosen finish position of their TRI-3 ticket is the winner.

COPYRIGHT LUCIO P. SALVUCCI, 1962"

Plaintiff goes on to allege that NYRA used

"a material appropriation of plaintiff's sequential order of finish entitled Big Triple and Triple copies from plaintiff's copyright entitled Tri-3 and Tri-3 Double." (¶ 9) (emphasis added).

Count One also alleges that defendant NYRA has "been engaging in unfair trade practices and unfair competition against plaintiff. . . ." (¶ 12). Plaintiff seeks (1) a permanent injunction against NYRA's "publishing, using, marketing or otherwise gaining profit from" the alleged infringement* and (2) damages as well as costs and plaintiff's attorneys' fees.

* Actually, the first paragraph of plaintiff's "Wherefore" clause in Count One is silent as to the activity which he seeks to enjoin; the space is merely blank.

The substantive allegations of Counts Two and Three, directed against the New York City Off-Track Betting Corporation and Roosevelt Raceway, Inc., respectively, are essentially identical to Count One, except that the "Wherefore" clause of Count Three requests an injunction against Roosevelt Raceway's use of the "Trifecta."*

Count Four, directed against Joseph Gimma "or his successor in title," realleges most of the substantive allegations of Count One, and then alleges that in his capacity as Chairman of the New York State Racing Commission, defendant licensed the three other defendants to use plaintiff's copyright under the name Big Triple, Triple and Trifecta thereby joining said defendants in an infringement thereof. (Count Four, ¶ 3). Count Four seeks the same relief sought in the three previous counts.

Defendants' Alleged Infringements

The conduct of parimutuel wagering in New York is strictly regulated by law, and is available only to licensed racing associations or corporations (see Unconsolidated Laws

* The Trifecta is another authorized name for the Triple. Upon information and belief, Roosevelt Raceway also refers to the wager as the Triple.

§§ 7952, 7954, 8008 (McKinney Supp. 1975)); and to publicly-created off-track betting corporation (Unconsolidated Laws §§ 8061 et seq., 8081 et seq. (McKinney Supp. 1975)). Under these statutes, only such forms of wager as are approved by the New York State Racing and Wagering Board may be adopted by such corporations, and only according to the terms and conditions as set by the Board.

At present, eight types of wagers are approved by the Board for thoroughbred and harness racing tracks. Aside from the familiar win, place and show bets, these are the Daily Double, in which the bettor must select the first place horses in each of two designated races; the Quinella, in which the bettor must select the first and second place horses in a designated race irrespective of position; the Exacta, in which the first and second place horses must be selected in order in a designated race; the Superfecta, in which the bettor must select the first four horses to finish in exact order in a designated race; and the Triple (also called the Trifecta),* in which the first, second and third horses to

* Because the public had expressed its preference for the name "Triple" during its previous introduction at harness tracks, NYRA adopted the wager on October 15, 1973, using that name, rather than the alternative title "Trifecta".

finish in a designated race must be selected in order of finish. These wagers are defined, and their operation described in the official Rules and Regulations of the Board, the relevant portions of which are attached as Exhibits 1 and 2 to the Affidavit of Patrick W. O'Brien, sworn to October , 1975, and submitted by NYRA in support of this motion (the "O'Brien Affidavit"). See Exhibit 1 for the rules applicable to thoroughbred racing, 9(D) New York Code, Rules and Regulations Subtitle T, Racing Part 4011, §§ 4011.3 (Daily Double), 4011.15 (Quinella), 4011.20 (Exacta), 4011.21 (Superfecta) and 4011.22 (Trifecta); and Exhibit 2 for the rules applicable to harness racing, Part 4122, §§ 4122.22-.23 (Daily Double), 4122.39 (Exacta), 4122.40 (Superfecta), 4122.41 (Triple), and 4122.42 (Quinella).

It is obvious that plaintiff's copyrighted work, the "Tri-3", describes, albeit in the most rudimentary detail, the form of wager known in New York both as the Triple or Trifecta which, before its authorization in New York,* was known in France, where it has been in existence since 1954, as the

* The Triple was officially authorized for harness racing by the New York State Harness Racing Comission on March 1, 1971, and for thoroughbred racing by the Board on August 28, 1973 (O'Brien Affd't ¶ 6).

Tierce (well before plaintiff's claimed 1962 copyright) (O'Brien Affidavit ¶ 9). Of course, the Triple is immediately seen as an obvious variant of the Exacta, in which the first two horses must be selected in order of finish. The Superfecta, in which the first four horses must be selected in order of finish, is but another variation of the Exacta.

As the O'Brien Affidavit further shows, NYRA does not and has never conducted any form of wager known as "The Big Triple," as alleged in paragraph 9 of the complaint, nor is any such form of wager authorized by the Board (¶ 13). Plaintiff's other idea, the "Tri-3 Double" thus could not be and has not been infringed by NYRA, having no authorized counterpart in New York.

POINT I

PLAINTIFF'S "IDEA" IS
NOT COPYRIGHTABLE

It is hornbook copyright law that, while a publication describing a plan, system or method may be subject to copyright protection, the actual use or performance of the plan, system or method is not:

"It is clear that neither mere ideas, nor titles may be protected under the present Copyright Act." Nimmer on Copyright, § 8.4 (1975).

"It is clear that systems for the playing of games or for engaging in contests or other activities may not be protected under the present Copyright Act." Id., § 8.5. See also § 37.83.

Since all that plaintiff claims is that defendant NYRA used "a material appropriation of plaintiff's sequential order of finish" (Complaint, Count One, ¶ 9), his complaint must be dismissed.

Indeed, a situation strikingly identical to that presented here was before the court in Briggs v. New Hampshire Trotting and Breeding Ass'n, Inc., 191 F.Supp. 234 (D.N.H. 1960). The plaintiff in Briggs sought damages and a permanent injunction restraining the defendants from infringing upon his horse racing wager plan. Plaintiff was the author of a brochure entitled "The Fabulous 4-7; The Incomparable 5-9 Big Bonus Pari-Mutuel Wagering Selections" which described a betting system in which bettors were to select winning horses for each of seven consecutive races, from the second through eighth race. The money from these bets was to be pooled and awarded to those selecting the largest number of winners.

In November, 1959, defendant, which operated the Rockingham Park racetrack, introduced at its track a form of wager called the "Pic-Six", in which bettors were to select the largest number of winners in the last six races. A brochure entitled "Pic-Six" was distributed.

The plaintiff in Briggs, like the plaintiff here, claimed that he was entitled to the exclusive use of his* "4-7" or "5-9" plan or system of parimutuel betting. The court rejected that contention and dismissed the complaint on the authority of Baker v. Selden, 101 U.S. 99 (1879), stating:

"[T]he statutes and court decisions give no protection by copyright to sports, games, or similar systems as distinguished from publications describing them." (191 F.Supp. at 236-37).

Moreover, just last week, the United States District Court for the District of New Hampshire dismissed the complaints in two of plaintiff's actions in that Court which plaintiff

* The Briggs court noted that on April 15, 1956, prior to the date of plaintiff's copyright, a system of betting known as the "5-10" was introduced at the Caliente Race Track in Tijuana, Mexico. In the "5-10", bettors selecting the most winners from the fifth through tenth race were awarded the pool. As noted in the O'Brien Affidavit the Triple was in use in France, as the Tierce, long before plaintiff's claimed copyright date.

himself described in his motion for a protective order filed in this Court, as "arising out of the same cause" as this action and "containing the same or similar allegations." Lucio P. Salvucci, et al. v. New Hampshire Jockey Club, Inc., et al., Civil Actions Nos. 75-223, 75-224 (D.N.H., filed October 6, 1975) (a copy of the Order of the Court is attached as Exhibit A to this memorandum). The Court stated:

"Both cases are dismissed for failure to state a cause of action. The basis of both complaints is that the plaintiffs have originated a wholly creative work protected by the copyright law which the defendants have appropriated. The work is a system of betting on horse races. It has long been established that ideas cannot be protected by a copyright. See, Briggs v. New Hampshire Trotting and Breeding Association, Inc., 191 F. Supp. 234 (D.N.H. 1960) and the cases cited therein. The only way to protect an original creative idea is by a patent. It is obvious that the plaintiffs' betting systems are not patentable."

The rule relied upon in the opinions cited above was stated and explained in the landmark case of Baker v. Selden, supra. There, plaintiff copyrighted a book, "Selden's Condensed Ledger", which explained a particular system of bookkeeping. The Supreme Court held that plaintiff's copyright did not extend to provide him with a monopoly of the bookkeeping system itself. In so doing, the Court distinguished between copyrights and patents:

"The copyright of the book, if not pirated from other works, would be valid without regard to the novelty, or want of novelty, of its subject-matter. The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. To give to the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever been officially made, would be a surprise and a fraud upon the public. That is the province of letters-patent, not of copyright. The claim to an invention or discovery of an art or manufacture must be subjected to the examination of the Patent Office before an exclusive right therein can be obtained; and it can only be secured by a patent from the government." (101 U.S. at 102).

"[W]hilst no one has a right to print or publish his book, or any material part thereof, as a book intended to convey instruction in the art, any person may practise and use the art itself which he has described and illustrated therein. The use of the art is a totally different thing from a publication of the book explaining it." (Id. at 104)

"The description of the art in a book, though entitled to the benefit of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters-patent." (Id. at 105).

See also Mazer v. Stein, 347 U.S. 201, 217 (1954).

Thus, in Brief English Systems, Inc. v. Owen, 48 F.2d 555 (2d Cir.), cert. denied, 283 U.S. 858 (1931), the Court rejected plaintiff's claim that he held a

copyright to a form of shorthand known as "Speedwriting:"

"For the present purposes, it is enough to recognize that the plaintiff's shorthand system, as such, is open to use by whoever will take the trouble to learn and use it." (48 F.2d at 556).

"Copyrightable material is found, if at all, in the explanation of how to do it." (Id.)

See also Chamberlin v. Uris Sales Corp., 150 F.2d 512, 513 (2d Cir. 1945); Guthrie v. Curlett, 36 F.2d 694, 696 (2d Cir. 1929).

In Morrissey v. Procter & Gamble Co., 379 F.2d 675 (1st Cir. 1967), the First Circuit held that, absent a patent, plaintiff had no exclusive rights in the idea of conducting a sweepstakes contest, the winner of which was to be determined by the random selection of social security numbers. See also Affiliated Enterprises, Inc. v. Gruber, 86 F.2d 958 (1st Cir. 1936) ("Bank Night" lottery for use by movie theatres); Seltzer v. Sunbrock, 22 F.Supp. 621, 630 (S.D.Cal. 1938) ("What Seltzer really composed was a description of a system for conducting races on roller skates. A system, as such, can never be copyrighted.") and Seltzer v. Corem, 107 F.2d 75 (7th Cir. 1939) (similar); Russell v. Northeastern Pub. Co., 7 F.Supp. 571, 572 (D.Mass 1934)

("[I]t is clear on the authorities that the complainant can acquire no exclusive rights in the particular distribution of the fifty-two cards, in the problem of play or the principles of contract bridge applicable to its solution. The most that can be claimed is protection against the copying of the language used in presenting the problem."); Freedman v. Grolier Enterprises, Inc., 179 U.S.P.Q. 476 (S.D.N.Y. 1973) (notation system for playing cards to be used in the game of bridge); Whist Club v. Foster, 42 F.2d 782 (S.D.N.Y. 1929) (competing sets of bridge rules).

The regulations of the Copyright Office themselves state that plaintiff's "idea" is not copyrightable. See 37 C.F.R. Part 202 - "Registration of Claims to Copyright", § 202.1 (1975):

"Material not subject to copyright.

* * *

"(b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing."

Plaintiff's complaint must therefore be dismissed.

POINT II

NYRA HAS NOT INFRINGED
UPON ANY COPYRIGHT HELD
BY PLAINTIFF

As noted above, it is clear upon reading plaintiff's complaint that the only infringement which he claims is the appropriation by the defendants of an "idea", and not of the particular form in which it is expressed.

But even if the complaint is generously construed as alleging that NYRA has infringed upon plaintiff's manner of expression, i.e., his words, summary judgment must be granted to NYRA. Simply put, NYRA has not infringed upon any of plaintiff's compositions. NYRA did not participate in the authorship, publication or dissemination of Exhibit B to plaintiff's complaint, alleged to be "a copy of defendant's infringement,"* which appears to have been published by one of the off-track betting corporations, as the appearance of both thoroughbred and harness symbols and the references to "the Corporation" and to "branch offices" indicate (NYRA maintains no branch offices) (O'Brien Affd't ¶ 12).

* Since paragraph 9 of Count One is incorporated by reference in Counts Two and Three, plaintiff directs the same allegation with respect to Exhibit B against both Roosevelt Raceway and New York City Off-Track Betting Corporation.

Indeed, the only descriptions of the Triple published by NYRA since its adoption in October, 1973 are contained in the Official Program, sold daily at NYRA's tracks (a copy of the description contained therein is attached to the O'Brien Affidavit as Exhibit 5), and in an educational pamphlet entitled "The ABC's of Thoroughbred Racing" distributed free by NYRA (which description is attached as Exhibit 6 to the O'Brien Affidavit). Upon comparison, it is obvious that neither of these descriptions of the Triple infringe on any copyright held by plaintiff.

In a case such as this, in which the subject matter involved allows little variation in the form of its expression, the courts have imposed a "stiff standard for proof of infringement", amounting to a required showing of appropriation in exact form, or plagiarism. See Continental Cas. Co. v. Beardsley, 253 F.2d 702, 705 (2d Cir.), cert. denied, 358 U.S. 816 (1958); Ricker v. General Electric Co., 162 F.2d 141, 142 (2d Cir. 1947); Dorsey v. Old Surety Life Ins. Co., 98 F.2d 872, 874 (10th Cir. 1938); 2 Nimmer on Copyright § 143.11 at p. 626.2 (1975). Thus in Freedman v. Grolier Enterprises, Inc., supra, 179 U.S.P.Q. 476 (S.D.N.Y. 1973), plaintiff claimed that defendants' printing of bridge

point value numerals directly on playing cards infringed upon his expression of the same idea. The court stated:

"Even if plaintiff's use of point count values on playing cards were copyrightable, there was no copying of the kind sufficient to make defendants liable. As indicated above, it is the expression of an idea, not the idea itself, which can be copyrighted. When the expression of the idea can be carried out only in more or less stereotyped form -- i.e., where the variations available to one who wishes to use an idea are quite limited -- then it may be that even small variations or differences in the mode of expression will be such as to preclude liability for copying." (Id. at 479).

See also Mattel, Inc. v. S. Rosenberg Co., 296 F.Supp. 1024 (S.D.N.Y. 1968).

Indeed, in a case in which defendant's published rules for a sweepstakes contest tracked so closely plaintiff's description of a similar contest that the above strict test was satisfied, the First Circuit dismissed the complaint nevertheless, holding that "plaintiff cannot complain even if his particular expression was deliberately adopted." Morrissey v. Procter & Gamble Co., supra, 379 F.2d 675, 679 (1st Cir. 1967). The court explained:

"When the uncopyrightable subject matter is very narrow so that 'the topic necessarily requires,' . . . if not only one form of expression, at best only a limited number, to permit copyrighting would mean that a party or parties, by copyrighting a mere handful of forms, could exhaust all possibilities of future use of the substance. . . . We cannot recognize copyright as a game of chess in which the public can be checkmated.

"Upon examination the matters embraced in [the contest rule] are so straightforward and simple that we find this limiting principle to be applicable." (Id. at 678-79, citations omitted).

In the instant case, plaintiff's three sentence description of a simple and obvious form of wager is itself so rudimentary that to grant it any measure of copyright protection whatsoever would be tantamount to granting a monopoly of the underlying idea. It is unnecessary to go so far, however, since it is absolutely clear, upon comparison, that NYRA has not appropriated plaintiff's words. NYRA respectfully submits that it is entitled to summary judgment on the issue of infringement.

POINT III

PLAINTIFF'S CLAIM FOR UNFAIR COMPETITION MUST BE DISMISSED

It is possible that plaintiff is also making a separate claim of unfair competition. Thus, paragraph 12 of Count One of the complaint alleges:

"After April 2, 1962 and continuously since defendant has been selling, using and otherwise profiting from its Big Triple[*] and has thereby been engaging in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage."

Plaintiff also seeks damages sustained in consequences of defendant's copyright infringement and "unfair trade practice and unfair competition." (Complaint, p. 3).

Plaintiff has alleged no facts indicating that he is in competition with NYRA, nor that NYRA is in competition with him, for the simple reason that he cannot do so. NYRA merely conducts the Triple at its racetracks pursuant to State license and authorization. Plaintiff Salvucci, being neither a racetrack operator nor an off-track betting corporation, could not possibly conduct his form of wager in New York,** at least legally, in the absence of such status or license from the State. Since "[c]ompetition is a contest between rivals", Aldrich v. Remington

* Of course, as noted supra, NYRA conducts no form of wager entitled the "Big Triple".

** Plaintiff alleges that all acts complained of were committed within the State of New York (Complaint, Count One, ¶ 13).

Rand, Inc., 52 F.Supp. 732, 736 (N.D.Tex. 1942), it is obvious that, in the absence of any competition between plaintiff and NYRA, there cannot possibly have been any competition characterizable as unfair.

Moreover, as noted, supra, plaintiff's "Tri-3" idea is certainly not an original one, the idea of a wager selecting the first three horses in a race in order of finish having been adopted in France as the Tiercé in 1954. Further, the idea is a simple extension of the Exacta, in which the first two horses must be selected. "A similarity based on . . . common sources is neither culpable nor misleading to the public." Seltzer v. Sunbrock, supra, 22 F.Supp. 621, 632 (S.D.Cal. 1938).

It is clear from the above that NYRA could not have been engaging in the palming off, actual deception or appropriation of property rights necessary to a finding of unfair competition. See Clairol Inc. v. Gillette Co., 389 F.2d 264 (2d Cir. 1968); Norwich Pharmacal Co. v. Sterling Drug, Inc., 271 F.2d 569 (2d Cir. 1959), cert. denied, 362 U.S. 919 (1960); Boas Box Co. v. Proper Folding Box Corp., 330 F.Supp. 401, 405 (E.D.N.Y. 1971).

CONCLUSION

For the reasons stated above, defendant NYRA respectfully submits that summary judgment should be granted dismissing the complaint as against it on the ground that it fails to state a claim upon which relief can be granted.

Dated: New York, New York
October 15, 1975

CAHILL GORDON & REINDEL
Attorneys for Defendant
The New York Racing
Association Inc.
Office & P.O. Address:
80 Pine Street
New York, New York 10005
(212) 944-7400

Of Counsel:

O. Carlyle McCandless
Ira A. Finkelstein

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Lucio P. Salvucci)
v.)
New Hampshire Jockey Club, Inc., et al) Civil Action No. 75-223
et al)

Lucio P. Salvucci, et al)
v.) Civil Action No. 75-224
New Hampshire Jockey Club, Inc., et al)

O R D E R

1. Both cases are dismissed as to Timothy Conners. The plaintiffs have sued "as he is Chairman of the New Hampshire Racing Commission." Since the action against Mr. Conners is really an action against the State of New Hampshire, the complaints are dismissed on the ground of sovereign immunity.

2. Both cases are dismissed for failure to state a cause of action. The basis of both complaints is that the plaintiffs have originated a wholly creative work protected by the copyright law which the defendants have appropriated. The work is a system of betting on horse races. It has long been established that ideas cannot be protected by a copyright. See, Briggs v. New Hampshire Trotting and Breeding Association, Inc., 191 F. Supp. 254 (D. N.H. 1960) and the cases cited therein. The only way to protect an original creative idea is by a patent. It is obvious that the plaintiffs' betting systems are not patentable.

I appreciate the difficulty a layman will have in understanding this opinion, but the law is crystal clear. It is my

opinion that it is futile for the plaintiffs to pursue this matter further.

SO ORDERED.

/s/ Hugh H. Bownes
United States District Judge

October 6, 1975

cc: Andrew Dunn, Esq.
Stephen T. Keefe, Jr., Esq.
John Ahlgren, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

LUCIO P. SALVUCCI,

Plaintiff

CIVIL ACTION
NO. 75 C 1236

-against-

Mishler, J.

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
and JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

Defendants

COUNTER AFFIDAVIT IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND/OR
FOR SUMMARY JUDGMENT

X

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF NORFOLK) ss.:
)

LUCIO P. SALVUCCI, being duly sworn, deposes as follows:

1. I am the plaintiff in this action and make this Affidavit in Opposition to the Motions of the Defendants to Dismiss and/or for Summary Judgment.
2. In April 1962, I obtained copyrights on two original and creative works entitled "Tri-3" and "Tri-3 Double" which constitute concrete literary expressions (see Exhibit A and A-1).
3. These literary expressions were first conceived and developed by me and were the result of the independent labors of my mental processes.
4. After obtaining certificates of copyright, I communicated with representatives of the New York Racing Association, and thereafter in June of 1963, went to the Aqueduct Race Track in New York and made a presentation to Mr. L. M. Walger of several different copyrighted works, the subject matter of which was

the written expression of exotic multiple wagers which included the "Tri-3" and "Tri-3 Double", leaving copies of same. As part of this presentation I made it clear that I was offering the New York Racing Association the use of my copyrighted works in exchange for royalties or some similar form of remuneration to be paid to me.

5. On or about July 20, 1963, I received a letter from the New York Racing Association signed by L. M. Walger acknowledging this presentation (see Exhibit B).

6. During 1963 and for several years thereafter, I made similar presentations to racing officials in the New England area.

7. During 1972, I learned that within the State of New York certain race tracks were using the "Triple" or "Big Triple" or "Trifecta" form of wagering, and that during 1973 the New York Racing Association began accepting Triple wagers.

8. Upon information and belief, I state that the horse and dog racing community is such that information of all kinds is exchanged among management throughout the United States and that by making this presentation to the New York Racing Association and to other race track officials, the other defendants here as well as others, were soon aware of my copyrighted works.

9. These copyrighted works are original and creative in that they add another and an innovative dimension to previous works, which are probably in the public domain, by requiring a bettor to select all three finish positions in their exact order starting with the first finish position.

10. I have no previous knowledge of the Tierce form of betting which it is stated, has been popular in France since 1954. However, as I understand the description of the Tierce, it pays the players who select the first three horses to finish in whatever order and provides an extra dividend to the player who is so fortunate as to hold the ticket with the exact order of finish. The "Tri-3" involves no such pooling of bets and only pays the player(s) who select the first three horses or dogs in their exact order of finish and not the six combinations of numbers as would apply in the Tierce.

11. The explanation of the "Triple" (Trifecta) is the same as the written expression of the plaintiff's copyright.

12. The terms "Triple", "Big Triple" and "Trifecta" are used as one and the same as far as I know and all are infringements upon the plaintiff's copyrighted works by whatever name.

LUCIO P. SALVUCCI

Sworn to before me this
28th day of October, 1975.

Notary Public

BEST COPY AVAILABLE

Page 3

Certificate

Registration of a Claim to Copyright in a published book manufactured in the United States of America

FORM A

| | |
|-------------------|------------------|
| CLASS | REGISTRATION NO. |
| A | 555006 |
| DO NOT WRITE HERE | |

This Is To Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

ABRAHAM L. KAMINSTINE

Register of Copyrights
United States of America

1. Copyright Claimant(s) and Address(es):

Name LUCIO P. SALVOCI

Address 746 COMMERCIAL ST., WEYMOUTH 89, MASS.

Name _____

Address _____

2. Title: TRI-3

(Title of book)

3. Authors:

Name LUCIO P. SALVOCI

(Legal name followed by pseudonym if latter appears on copies)

Citizenship U. S. A.
(Name of country)

Domiciled in U. S. A. Yes YES No 746 Address COMMERCIAL ST., WEYMOUTH 89, MASS.

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

4. Date of Publication of This Edition:

MARCH 30, 1962

5. New Matter in This Version:

6. U. S. Edition of Book in English First Manufactured and Published Abroad: If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

Year date of first publication of foreign edition _____
(Year)

Was claim to ad interim copyright registered in the foreign edition?

Yes No

If claim to ad interim copyright is not registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Yes No

EXHIBIT A

Complete all applicable spaces on next page

8. Deposit account:

Send correspondence to:

Name LUCIO A. SAVUCCI

9. Send certificate to:

(Type or
print
name and
address)

Name
Address

LUCIO A. SAVUCCI

746 COMMERCIAL ST.

(Number and street)

W. BOSTON
(City)

RC
(Zone)

MASS.
(State)

Address, 746 COMMERCIAL ST., W. BOSTON, MASS.

Information concerning copyright in books

When To Use Form A. Form A is appropriate for published books which have been manufactured in the United States.

What Is a "Book"? The term "books" covers not only material published in book form, but also pamphlets, leaflets, cards, and single pages containing text. Books include fiction, nonfiction, poetry, collections, directories, catalogs, and information in tabular form.

Unpublished Books. The law does not provide for registration of "book" material in unpublished form. Unpublished books are protected at common law against unauthorized use prior to publication.

Duration of Copyright. Statutory copyright in published books lasts for 28 years from the date of first publication, and may be renewed for a second 28-year term.

How to secure statutory copyright in a book

First: Produce Copies With Copyright Notice. Produce the work in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

Second: Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as "... the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

Third: Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Con-

gress, Washington 25, D. C., two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$4.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1958. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

NOTE: It is the act of publication with notice that actually secures copyright protection. If copies are published without the required notice, the right to secure copyright is lost, and cannot be restored.

Books manufactured abroad

In General. Form A is not appropriate for books which have been manufactured outside the United States.

Foreign-Language Books. Applications covering foreign-language books by foreign authors, manufactured abroad, should be submitted on Form A-B Foreign.

English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full-term registration on Form A-B Foreign.

(1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has

been secured under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within six months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English language work by a foreign author first published abroad is eligible for full-term U. S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country, and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

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| Application and affidavit received | |
| A&R -2 1962 | |
| Two copies received | |
| A&R -2 1962 | |
| Fee received | |
| 1251C9 APR-262 | |

TRI-3

TRI-3 is a 3 finish position play or wager on horses or dogs.

The object is to select correctly all finish positions starting with your **first** chosen finish position of your TRI-3 ticket.

If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their **first** chosen finish position of their TRI-3 ticket is the winner.

COPYRIGHT LUCIO P. SALVUCCI, 1962

Certificate

Registration of a Claim to Copyright

in a published book manufactured in the United States of America

FORM A

| | |
|-------------------|------------------|
| CLASS | REGISTRATION NO. |
| A | 555005 |
| DO NOT WRITE HERE | |

This Is To Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

ABRAHAM L. KAMINSTEIN

Register of Copyrights
United States of America**1. Copyright Claimant(s) and Address(es):**Name LUCIO P. SALVUCCIAddress 746 COMMERCIAL ST., WELMOUTH 29, MASS.

Name _____

Address _____

2. Title: TRI-3 DOUBLE

(Title of book)

3. Authors:Name LUCIO P. SALVUCCI

(Legal name followed by pseudonym if latter appears on copies)

Citizenship U.S. A.
(Name of country)Domiciled in U. S. A. Yes YES No 746 COMMERCIAL ST., WELMOUTH 29, MASS.

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

Name _____

(Legal name followed by pseudonym if latter appears on copies)

Citizenship _____
(Name of country)

Domiciled in U. S. A. Yes _____ No _____ Address _____

4. Date of Publication of This Edition:March 30, 1962**5. New Matter in This Version:****6. U. S. Edition of Book in English First Manufactured and Published Abroad:** If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

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(Year)

Was claim to ad interim copyright registered in the foreign edition?

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If claim to ad interim copyright was not registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Complete all applicable spaces on next page

EXHIBIT B-A-1

124

8. Send correspondence to:

Name **LUCIO R. SALVUCCI**

Address **746 COMMERCIAL ST., WENDELL, MASS.**

9. Send certificate to:

(Type or
print
name and
address)

Name
Address

LUCIO R. SALVUCCI

746 COMMERCIAL ST.

(Number and street)

WENDELL
(City)

80
(Zone)

MASS.
(State)

Information concerning copyright in books

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Second: Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as "... the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

Third: Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Con-

gress, Washington 25, D. C., two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$4.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1958. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

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Books manufactured abroad

In General. Form A is not appropriate for books which have been manufactured outside the United States.

Foreign-Language Books. Applications covering foreign-language books by foreign authors, manufactured abroad, should be submitted on Form A-B Foreign.

English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full term registration on Form A-B Foreign.

(1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has

been secured under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within six months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English language work by a foreign author first published abroad is eligible for full term U. S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country; and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

FOR COPYRIGHT OFFICE USE ONLY

Application and affidavit received

APR - 2 1962

Two copies received
APR - 2 1962

Fee received

125169 APR-262

TRI-3 DOUBLE

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1 2 and 3 in **2** races on horses or dogs.

The object of this **TRI-3 DOUBLE** is to select correctly the chosen finish positions in both races of the play or wager. Winning tickets with the correct first three chosen positions (first half of the **TRI-3 DOUBLE**) must be exchanged for your selections on the second half of the **TRI-3 DOUBLE**.

The person(s) getting the most consecutive correct finish positions starting with their **first** chosen finish position on the **first** half of the **TRI-3 DOUBLE** ticket will be the winner.

COPYRIGHT LUCIO P. SALVUCCI, 1962



THE NEW YORK RACING ASSOCIATION INC. JAMAICA 17, LONG ISLAND, NEW YORK

DIRECTOR OF MUTUEL DEPARTMENT

July 19, 1963

Mr. Lucio P. Salvucci
746 Commercial Street
E. Weymouth, Mass. 02189

Dear Mr. Salvucci:

I have your letter of July 12, with reference to our meeting on June 13, at which time you showed me several copyrighted new types of wagering which we discussed.

I have taken these up in detail with the President and Vice President of our Association and we are not interested in using any of these types of wagering in the immediate future.

If you desire the return of the copies you left with me, kindly advise me and I will forward same to you immediately.

Yours sincerely,

A handwritten signature in cursive ink, appearing to read "L. M. Walper".
L. M. Walper

Aqueduct

Belmont Park

Saratoga

5

127

CERTIFICATE OF SERVICE

I, Stephen T. Keefe, Jr., attorney of record for the Plaintiff, do hereby certify that I have this day forwarded copies of the within Counter Affidavit in Opposition to Defendants' Motions to Dismiss and/or For Summary Judgment through the United States mail, postage prepaid, to:

- (1) Ira A. Finkelstein, Esquire
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005
 - (2) W. Bernard Richland, Corporation Counsel
Attn: Carol Noymer, Asst. Corp. Counsel
Municipal Building
New York, New York 10007
 - (3) Jerome Bauer, Esquire
Bauer and Amer, P.C.
114 Old Country Road
Mineola, New York 11501
 - (4) Louis J. Lefkowitz, Attorney General, State of New York
Two World Trade Center
New York, New York 10047 Attn: Mortimer Sattler, Asst.

(5) Louis J. Martine, Esquire
McMahon & Martine
120 Broadway
New York, New York 10005
Dated at Quincy, Massachusetts on the 30th day of October 1975.

Stephen T. Keefe, Jr.
1359 Hancock Street
Quincy, Massachusetts 02169
479-9700

Sworn to before me this 30th day
of October 1975.

Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUCIO P. SALVUCCI,

Plaintiff

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.;

ROOSEVELT RACEWAY, INC.; AND
JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK
STATE RACING COMMISSION,

CIVIL ACTION
NO. 75 C 1236

Mishler, J.

PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND/OR
FOR SUMMARY JUDGMENT

Defendants

- - - - - X

The plaintiff has reduced to writing his expression of ideas concerning the sequential order of finish of horse and dog races, and has obtained certificates of registration of a claim to copyright which he contends the defendants are infringing or have infringed upon. Here follows the plaintiff's expression of those creative works and directly beneath the defendants' alleged infringement.

Plaintiff's Copyrighted Work
TRI-3

TRI-3 is a 3 finish position play or wager on horses or dogs. The object is to select correctly all finish positions starting with your first chosen finish position of your TRI-3 ticket. If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their first chosen finish position of their TRI-3 ticket is the winner.

TRI-3 DOUBLE

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1, 2 and 3 in two races on horses or dogs. The object of this TRI-3 DOUBLE is to select correctly the chosen finish positions in both races of the play or wager. Winning tickets with the correct first three chosen positions (first half of the TRI-3 DOUBLE) must be exchanged for your selections on the second half of the TRI-3 DOUBLE. The person(s) getting the most consecutive correct finish positions starting with their first chosen finish position on the first half of the TRI-3 DOUBLE ticket will be the winner.

Defendants' Instructions
THE TRIPLE

A. The triple is a form of pari-mutuel bet. The object of the Triple is to select in order the first, second and third place horses in the designated triple race. The Triple pool shall be held entirely separate from all other pools and is no part of a daily double, exacta or other wagering pool.

B. If a horse is scratched or declared a non-starter, no further triple tickets may be issued designating such horse and all Triple tickets previously issued designating such horse shall be refunded and the money deducted from the gross pool.

C. In the event of a dead heat or dead heats, all Triple tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets and contrary to the show pool practice the aggregate number of winning tickets shall divide the net pool and be paid the same payoff price.

D. Coupled entries and fields are prohibited in Triple pools.

E.1. If there is no bet on a winning combination of a Triple pool, payoff shall be made on Triple tickets selecting the first two horses in order; failure to select the first two horses, payoff to Triple ticket holders selecting the winner to win; failure to select the winner to win shall cause a refund to all Triple ticket holders.

E.2. If less than three horses finish, payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

IS THE SUBJECT MATTER A
MEANINGFUL AND SUBSTANTIAL VARIATION

It is important to note that the plaintiff developed and obtained copyrights on these written expressions of exotic wagering in 1962. In 1963 the plaintiff traveled to New York where he made a presentation to representatives of the New York Racing Association, and this presentation included his TRI-3 and TRI-3 DOUBLE. Shortly after making these presentations and leaving copies of his explanations with representatives of the New York Racing Association, he received a letter dated July 19, 1963 in which it is stated, "we are not interested in using any of these types of wagering in the immediate future", and that letter is an exhibit to the Affidavit. Within the next several years, the plaintiff visited with representatives of other race tracks to explain his copyrighted works, and as in the case of the New York Racing Association, to offer them an opportunity to enter into an agreement with him for their use. As far as is known to the plaintiff,

none of the material of the plaintiff which he alleges contains substantial and distinguishable variations from previously existing wagering methods, was in use anywhere until quite a few years later, that is, in the 1970 time frame. The world of horse and dog tracks is a community all its own. It is, in the plaintiff's view, more than sheer coincidence that some years after members of the horse and dog track community had access to his material that use of these systems became wide spread.

Harry Lee, who has been described as one of America's leading authorities on race horse handicapping, in his book entitled "Race Horse Handicapping", says on page 149 of that book: "The Superfecta and the Trifecta are America's inventions - or innovations - expansions of betting methods borrowed from other lands."

Plaintiff would agree that multiple wagering systems such as the "Daily Double" is no doubt in the public domain. However, he urges that because he has independently created a meaningful and substantial variation that his work is copyrightable and enforceable against the defendants.

(Donald v. Zack Meyers T.V. Sales)
(CA Tex) 426 F. 2nd 1027)

(Consolidated Music, Inc. v. Hansen Pub., Inc.)
(DCNY) 339 F. Supp. 1261)

Plaintiff having reduced his ideas to writing and copyrighted them says that his written expressions are original and creative and therefore entitled to protection.

(Briggs v. N.H. Trotting and Breeding Assn., Inc.)
(191 F. Supp. 234 @ 236) (DCNY)

IS THE SUBJECT MATTER COPYRIGHTABLE

17 United States Code, Section 9 protects the rights of alien authors to copyrights obtained in his home country here in the United States when there are reciprocal treaties or agreements giving citizens of the United States the benefit of copyright in such foreign state.

Article 2 of the Universal Copyright Convention contains such an agreement, and both the United States and the Country of Argentina are signatories to the Universal Copyright Convention. In 1972 an Argentine Court ruled that one Juan Pantano who had copyrighted a method of exotic wagering was entitled to damages from the Buenos Aires Jockey Club which used it. I have a copy of this decision but at the moment it has not yet been reduced to the English language.

In any event, if that is now the case law in Argentina, since Argentina is a signatory nation to the Universal Copyright Convention as is the United States of America, it can be reasoned that in accordance with Article 2 of the convention text, Juan Pantano's wagering system would be protected here. If this court is obliged to recognize a property right of Mr. Pantano, why should not that be authority for recognizing what should be the same property right of the plaintiff.

It would appear from the above that at least in the Country of Argentina, this type of creative expression is copyrightable. In the case of Briggs v. The New Hampshire Trotting and Breeding Assn., Inc., 191 F. Supp. 234, the Court recited the Baker v. Selden decision, 101 U.S. 99, the subject matter of which was a particular system of bookkeeping. The Baker v. Selden case did

make a clear distinction between writings describing plans or systems and the plans or systems themselves, and further stated that writings describing plans and systems were subject to copyright. It would appear that the plaintiff's work here would fit within the parameters of the wording in that decision, and therefore, apart from the issue of whether or not the plaintiff's work constitutes a significant variation on anything prior, it would appear that the subject matter itself can be protected by a copyright.

Plaintiff urges that his written expressions are independent, creative and a substantial variation of other work and constitute copyrightable material. He alleges that access direct or constructive has occurred and that years after he obtained copyrights, the substantial wording of his work is being used by the defendants at their race tracks for profit.

Wherefore, plaintiff urges that the Motions to Dismiss And/Or For Summary Judgment be denied.

Dated: Oct. 30, 1975

Stephen T. Keefe, Jr.
Attorney for Plaintiff
1359 Hancock Street
Quincy, Massachusetts 02169
479-9700

CERTIFICATE OF SERVICE

I, Stephen T. Keefe, Jr., attorney of record for the Plaintiff, do hereby certify that I have this day forwarded copies of the within Plaintiff's Brief in Opposition to Defendants' Motions to Dismiss and/or For Summary Judgment through the United States mail, postage prepaid, to:

- (1) Ira A. Finkelstein, Esquire
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005
- (2) W. Bernard Richland, Corporation Counsel
Attn: Carol Noxmer, Asst. Corp. Counsel
Municipal Building
New York, New York 10007
- (3) Jerome Bauer, Esquire
Bauer and Amer, P.C.
114 Old Country Road
Mineola, New York 11501
- (4) Louis J. Lefkowitz, Attorney General, State of New York
Two World Trade Center
New York, New York 10047
Attn: Mortimer Sattler, Asst. Attorney General
- (5) Louis J. Martine, Esquire
McMahon & Martine
120 Broadway, New York, New York 10005

Dated at Quincy, Massachusetts on the 30th day of October 1975.

Stephen T. Keefe, Jr.
1359 Hancock Street
Quincy, Massachusetts 02169
479-9700

Sworn to before me this 30th day
of October 1975.

Notary Public

CLERK'S OFFICE
United States District Court
FOR THE

L. S. VICK

N.Y. RACING ASSN., INC., ET AL.

Civil Action No.

75 C 1236

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

There was entered on the docket
an order (Judgment).

12/3/75

, 19

LUCIO P. SALVOC

A.O. NO. 145
Plaintiff,

LEWIS ORGEL

, CLERK

-against-

THE NEW YORK RACING ASSN., INC.;
NEW YORK CITY OFF-TRACK BETTING
CORP.; ROOSEVELT RACEWAY, INC.;
and JOSEPH A. GIMMA, AS HE IS
CHAIRMAN OF THE NEW YORK STATE
RACING COMMISSION,

Defendants.

Memorandum of Decision
and Order

December 2, 1975

MISHLER, CH. J.

Defendants, New York Racing Association, Inc. (NYRA),
Roosevelt Raceway, Inc. (Roosevelt), and Joseph A. Gimma, move for
^{/1}summary judgment, Rule 56 (F.R. Civ.P.).

Plaintiff alleges four counts of copyright infringement;
each separately directed against one of the four defendants. He claims
that he is the owner of copyrighted works registered in the Office of the
^{/2}Register of Copyrights on April 2, 1962, as Tri-3 Double and Tri-3.

/1

All the motions seek alternative relief under F.R.C.P. 12(b) (6), i.e.,
to dismiss the complaint for "failure to state a claim upon which re-
lief can be granted." All the parties, with the exception of Gimma,
submitted affidavits.

/2

The copyrighted works consist of methods of betting. The methods as
described in the certificate of registration are appended to this
memorandum of decision and order.

Pari-mutuel betting is controlled by statute in New York State—N.Y. Unconsolidated Laws, §§7952, 7954 and 8008. Methods of betting at authorized establishments are sanctioned by the New York State Racing and Control Board. In addition to conventional betting at thoroughbred and harness race tracks, the Board has approved the Daily Double, Quinella, Exacta, Trifecta (sometimes called the Triple),
^{/3}
and Superfecta.

The method of betting is not copyrightable. Novel and useful ideas may attain patent protection, but ~~not~~ copyright protection. In Baker v. Selden, 101 U.S. 99 (1880), plaintiff obtained a copyright on a book explaining a system of bookkeeping. The court dismissed the claimed copyright infringement noting:

There is no doubt that a work on the subject of book-keeping though only explanatory of well known systems, may be the subject of a copyright; but, then, it is claimed only as a book. . . . The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. . . .

• • •

/3

In the Daily Double, the bettor must select the winner in each of two designated races.

In the Quinella, the bettor must select the two horses in each of two designated races that finish first and second.

In the Exacta, the bettor must select the first two horses in their actual order of finish in the designated race.

The Tri-Fecta (Triple) is a variation of the Exacta. The first three horses in the designated race must be selected in their actual order of finish.

The Superfecta is a further variation of the Exacta: the first four horses are selected in their order of finish.

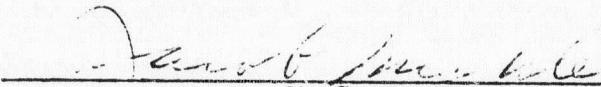
. . . The copyright of a book on bookkeeping cannot secure the exclusive right to make, sell and use account books prepared upon a plan set forth in such book. . . . 101 U.S. at 101-02, 104.

It is the manner of expressing and not the idea itself which is copyrightable. L. Batlin & Son, Inc. v. Jeffrey Snyder, d/b/a J.S.N.Y. and Etna Products Co., Inc., No. 75-7308 (2d Cir. October 24, 1975); Roth Greeting Cards v. United Car Co., 429 F.2d 1106 (9th Cir. 1970); Welles v. Columbia Broadcasting System, Inc., 308 F.2d 810 (9th Cir. 1962). The instant copyrights attempt to protect the method of betting and are invalid.⁷⁴ Alternatively, should the complaint be interpreted as an infringement of the expression of the betting method, rather than the method itself, the court finds no genuine issue of fact exists since plaintiff's method of expression was never employed by defendants.

The limited copyright of the expression of the methods of betting was not infringed. Defendants' motions are in all respects granted, and it is

SO ORDER

The Clerk of the Court is directed to enter judgment in favor of defendants and against plaintiff dismissing the complaint.


U. S. D. J.

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Plaintiff's copyrights were held invalid in Salvucci v. New Hampshire Jockey Club, No. 75-223 and 75-224 (D.N.H. October 6, 1975). The court is advised that the decision is on appeal.

A P P E N D I X

TRI-3 DOUBLE

TRI-3 DOUBLE is a finish position play or wager consisting of positions 1, 2 and 3 in 2 races on horses or dogs.

The object of this TRI-3 DOUBLE is to select correctly the chosen finish positions in both races of the play or wager. Winning tickets with the correct first three chosen positions (first half of the TRI-3 DOUBLE) must be exchanged for your selections on the second half of the TRI-3 DOUBLE.

The person(s) getting the most consecutive correct finish positions starting with their first chosen finish position on the first half of the TRI-3 DOUBLE ticket will be the winner.

TRI-3

TRI-3 is a 3 finish position play or wager on horses or dogs.

The object is to select correctly all finish positions starting with your first chosen finish position of your TRI-3 ticket.

If no one selects correctly all three finish positions, then the person(s) getting the most consecutive correct finish positions starting with their first chosen finish position of their TRI-3 ticket is the winner.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK 11201

CHAMBERS OF
JACOB MISHLER
CHIEF JUDGE

December 2, 1975

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McMahon & Martine
120 Broadway
New York, New York 10005

Re: Lucio P. Salvucci v. The New York
Racing Assn., Inc., et al.
Docket No. 75 C 1236

Gentlemen:

At the request of the Honorable Jacob Mishler, I am forwarding a copy of a memorandum of decision and order signed today in the above matter.

Very truly yours,

Claire Toy
Claire Toy
Secretary to the
HONORABLE JACOB MISHLER
Chief Judge

Encl.